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In the matter of: :
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COMPULSORY LICENSE FOR MAKING :
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AND DISTRIBUTING PHONORECORDS; : CRT Docket No. 80-2
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ROYALTY ADJUSTMENT PROCEEDING :
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(MECHANICAL) :
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Rayburn House Office Building
Room 2359
Washington, D.C.

Tuesday, July 15, 1980

The hearing in the above-entitled matter commenced
at 10:05 a.m., pursuant to notice.

BEFORE:

MARY LOU BURG, Chairman
THOMAS C. BRENNAN, Commissioner
DOUGLAS E. COULTER, Commissioner
CLARENCE L. JAMES, JR., Commissioner
FRANCES GARCIA, Commissioner

APPEARANCES:

FREDERICK GREENMAN, JR., Attorney-at-Law
Counsel for AGAC

RICHARD M. ZUCKERMAN, Attorney-at-Law
NANCY KILSON, Attorney-at-Law
Counsel for NMPA

JAMES F. FITZPATRICK, Attorney-at-Law
CARY H. SHERMAN, Attorney-at-Law
JILL DEAL, Attorney-at-Law
Counsel for RIAA

C O N T E N T S

WITNESS: Direct Cross Redirect Recross

JARRELL McCracken

By Mr. Sherman 7

By Ms. Kilson 81

By Mr. Sherman 110

GENE NORMAN

By Mr. Sherman 120

By Mr. Zuckerman 149

EXHIBITS: Identified:

RIAA Exhibit R 22

RIAA Exhibit S 123

P R O C E E D I N G S

JW1-1

CHAIRMAN BURG: Good morning. We will come to order and proceed with the next witness unless initially there are any housekeeping matters. Mr. Greenman has one.

MR. GREENMAN: One matter, Madam Chairman, if I might deliver to yourself and the Commissioners a motion which I have served on other participants which we referred to earlier. Attached with the motion is a copy of an opinion that is cited in the motion and I have given other additional copies to the secretary.

CHAIRMAN BURG: Mr. Zuckerman?

MR. ZUCKERMAN: Madam Chairman, I would like to know also that Commissioner Brennan had requested on Wednesday of last week that the NMPA makes suggestions to the Tribunal of the manner of submitting financial data on music publishing in the event that the Tribunal requests such data.

We have undertaken to speak with several music publishers and also with our economist, Robert Nathan, and with Leo Strauss, our accountant. We have not yet been able to complete that and we will try to complete that as expeditiously as possible and will submit the suggestions when we can.

We do, of course, maintain our original position that the data is not relevant to the Tribunal and that we should not be requested to submit it.

CHAIRMAN BURG: Thank you, Mr. Zuckerman.

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1 MR. FITZPATRICK: May I note for the record, Mrs.
2 Burg, that we for the RIAA had filed a further memorandum this
3 morning in response to Commissioner Brennan's suggestion that
4 our initial request might be flushed out in some regards. That
5 paper indicates that our initial amended memorandum was drafted
6 in as broad terms as possible to permit the publishers and their
7 experts to devise an income and expense statement unfettered by
8 a great deal of specification, permit them to develop line items
9 that would be the most appropriate in their view as long as
10 proper financial data was provided.

11 The suggestion was made that possibly we could be
12 somewhat more specific and in our paper today we are still
13 being, I think, elementary in terms of the items have further
14 spelled out the elements of income, the central elements of
15 expense, and the fact of profit which we think/fully appropriate
16 for the publishers to submit to permit at the comparative
17 analysis of profitability which is required under the second
18 criterion.

19 We will be glad to comment or argue on the motion at
20 any later point that the Tribunal requests. But I think our
21 papers are complete as of this moment.

22 COMMISSIONER JAMES: Madam Chairman. Mr. Zuckerman,
23 is it your -- did I understand what your last comment was? Your
24 side still objects to and opposes this memorandum? Is that my
25 understanding?

JW1-3

1 MR. ZUCKERMAN: That is correct, Commissioner James.

2 COMMISSIONER JAMES: And you are preparing what?

3
4 MR. ZUCKERMAN: Commissioner Brennan requested us last
5 week to suggest the manner in which and the information which
6 might be collected from Music Publishers in the event that the
7 Tribunal decides to request such information. I believe that
8 Commissioner Brennan had prefaced it with saying that he was
9 borrowing your technique of posing the hypothetical question --

10 COMMISSIONER JAMES: It wasn't clear on the record
11 whether or not there was still opposition from your side and
12 that the opposition would be continued.

13 MR. ZUCKERMAN: Yes, we do still oppose the motion of
14 the recording industry for several reasons. I don't think that
15 now is really a time to get into an argument of the reasons
16 but we oppose it both on legal grounds and on practical grounds
17 and we will present those arguments at an appropriate time.

18 CHAIRMAN BURG: Mr. Fitzpatrick, is your --

19 MR. FITZPATRICK: Yes, our witness is here. Mr.
20 Sherman will be taking our witness through.

21 CHAIRMAN BURG: Would you stand to be sworn, please?
22 Whereupon,

23 JARRELL McCRACKEN
24 was called as a witness, and after being first duly sworn, was
25 examined and testified as follows:

DIRECT EXAMINATION

Accurate Reporting Co., Inc.

(202) 726-3801

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BY MR. SHERMAN:

Q. Would you please state your name, address, and occupation for the record?

A. My name is Jarrell McCracken. I'm from Waco, Texas and I live at 4820 Hillcrest Drive and I'm president of Word, Incorporated.

Q. Would you please describe to the Tribunal the business of Word, Incorporated?

A. We are a company that is in the recording business and we specialize in religious recordings of all types. That would include what we would call country gospel music, traditional church music, black gospel music, contemporary music, and some forms of music that fit in-between those. We also publish music and have several music publishing entities within our company. We also publish religious books and educational materials on audio cassettes with instructional materials to be used in churches.

Q. Are you also engaged in any distribution functions?

A. Yes, we are. We have our own distributional organization with approximately 24 field representatives selling records and music and eight field representatives selling books and educational products. We do some distribution of records for other companies as well as our own.

Q. Does your record company have a variety of labels reflecting the different kinds of music you have referred to?

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A. Yes, it does. We have tried to distinguish because of the need for people who are our customers to know something of the type of product they're getting so that if it simply says it's religious music and their idea of religious music is what they hear in church on Sunday morning as compared to some younger people who hear religious music in sounds that are very similar to pop music, we have tried to distinguish these by having several different labels.

Q. Do you have a number of different publishing companies according to the same kind of breakdown?

A. Yes, we do.

Q. Could you tell us what they are?

A. The names of them?

Q. Yes.

A. Yes. We have Word Music which is our original music publishing company. We started in 1964. We have a company called Rodehever Music which is a very old publishing company which we purchased in 1969. We have a company called Day Spring. We are half-owners of a music publishing company called Lexicon Music. And we have another publishing company for the country gospel field which is called Canaanland Music and another in that area called First Monday.

Q. Can you give us some background on how Word first got started?

A. Well, it started I guess you would have to say

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somewhat accidentally. When I was a student at Baylor University I worked at a radio station and primarily was a sports announcer. I was also studying in the field of religion and considering the ministry. I was asked one night to talk to a youth group combining my interest in sports and religion. And I personally had a difficult time coming up with a speech but someone gave me a little article that had been written called "The Game of Life." It was an imaginary football game between the Christian team and the forces of evil and it was rather cleverly done.

And it so happened that during the summers I was broadcasting baseball games by the old Western Union method sitting in a studio getting Western Union reports from wherever they were playing baseball and it was my job to play like I was at the game and recreate the game from these Western Union reports.

AND I had gone out and recorded a lot of crowd noise at the baseball park so that we could simulate whatever was happening, whether somebody got a base hit or they were booing the umpire -- we even had a popcorn man going through there every so often.

So it occurred to me in trying to think about making this little talk that maybe the thing to do would be to record it and use the same mechanisms we were using for broadcasting baseball games.

And so that's really what I did one night after a

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1 baseball game. I just asked the people to stay and we put it on
2 directly onto a disc. And I gave this record to the people and
3 they played it at this church and people started asking for
4 copies of it.

5 Other people borrowed the record and played it at
6 different church groups and other people started asking for
7 copies. And so pretty soon I had to figure out how you make
8 records besides cutting them one at a time with a needle. And
9 that's how I got into the record business.

10 Q. Now, you testified that you started with a record
11 company then and not a publishing company but you are now in
12 the publishing business. Can you tell us why you decided to get
13 into the publishing business?

14 A. Well, yes. Of course, one thing led to another after
15 the original recording which was really not a musical record.
16 People began to ask me what other things I was going to do. They
17 figured I had started in the record business which I really
18 hadn't intended to do but suddenly I found that I was anyhow.

19 And we used to have some very inspirational religious
20 services on campus and a large percentage of the student body
21 participated. And I felt that if we could have this music on
22 record and make it available to other people that it would be a
23 great service, that they could play it in their homes or in
24 church groups or wherever. And that's how I started into music.
25 And some of the people whom I heard as a student were the first

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people that I approached to do recordings.

So we were strictly a record company up until the early '60's and, of course, as I learned a little bit about records I learned that it's very difficult to start as a very small unknown company and you're not supposed to be a record company in Waco, Texas, I found that out. You're supposed to be in New York or Los Angeles.

But I think it was very fortunate that I was really from an out-of-the-way place because at least it took me a long time to learn the things that you can't do, that's you're not supposed to do. And we tried a few things that ended up helping us a lot.

But as we moved along, one of the real difficult problems was dealing in the area of copyrights. Especially as we moved into recording more and more new music, it moved us out of the area where we could use a lot of the public domain music that does exist in church music like we were doing at the beginning.

And I found that increasingly in order to get ourselves established as a record company we had to learn to make contacts with radio stations. We had to promote, we had to get air play, we had to advertise, and that there was a terrific amount of energy and effort involved in trying to promote strong enough that we could get somebody to, first of all, put our records in their stores, and secondly, hopefully somebody would

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come in and buy those records. And as the mechanical royalty situation became an increasing factor, then I had to give consideration to that as a part of the cost of our company doing business.

And since I found that when new music would come along that we were the ones who were doing the work, we were the ones who were making something happen here, and so it became obvious that as we built the promotional and marketing facilities for our records, we were also building promotional and marketing facilities for the songs.

And it made sense for us then to take this step of moving into music publishing since we were doing everything that but having the songs anyhow. We were the ones who in effect were making the songs popular or acceptable.

Q. There has been a great deal of testimony in this proceeding about the dominance of the singer-songwriter in the music industry today. Is the singer-songwriter a dominant force in the area of religious music too?

A. It has become so in the last few years. I suppose in our field we lag a little bit behind the popular music field and it started there sooner but I would say that 50 percent of our recording artists today are singer-songwriters and most of the songs on their albums are their own musical compositions and either owned personally by them or by their publishing companies.

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1 Q Well, Stan Cornyn who is the executive vice president
2 of Warner Brothers Records talked about the new hypenates, as
3 he called them, singer-songwriter-publishers. Are you testifying
4 that your singer-songwriters often have their own publishing
5 company too?

6 A Yes. Most of them do have their own publishing com-
7 panies and the more successful they become, the more they move
8 into their own publishing companies. It's a natural transition
9 because they want to control their music and they want to get
10 the extra income from owning the songs and they increasingly
11 want to put practically all the songs on an album to be their
12 own.

13 The stronger they become, obviously the more pressure
14 they can put on us to include their copyrights, either their
15 own compositions or ones that they own in their publishing
16 company.

17 Q Let's go back to Word for a moment. Are your record
18 company operations and your publishing company operations con-
19 ducted as an integrated entity?

20 A Basically they are except for accounting purposes. In
21 our bookkeeping we try to keep them separate so we can keep up
22 with certain expenses particularly editorial expenses in the
23 music publishing areas. But in terms of the promotion and mar-
24 keting aspects which are the major aspects, that's all done
25 through the same group of those who are in charge of marketing,

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1 advertising, promotion, and sales, the field sales organization
2 and those who make contact with radio stations and so forth.

3 Q. Is there any special synergy between your record
4 company and your publishing company because of the kind of music
5 you are dealing in?

6 A. Well, yes, there is a definite synergy because first
7 of all we're strictly in religious music; therefore, we are
8 trying to serve churches and religious radio stations as well as
9 to reach the secular radio stations.

10 And the music publishing division lives on the
11 royalties from mechanical royalty income and from performance
12 income. Therefore, what happens in our record marketing group in
13 terms of sales of records directly determines how well the
14 publishing company does.

15 Q. Let's turn to the services that your publishing com-
16 pany performs for the songwriter who is strictly a songwriter.
17 Can you tell us what those services are?

18 A. Well, any songwriter whose copyright we have and we
19 record then the services that we render for our artists as well
20 as for ourselves in terms of developing a record and promoting
21 a record, those services accrue to the benefit of the individual
22 songwriter. If he has one song on a given record and we succeed
23 in making that record happen, then that person obviously is
24 going to benefit substantially from mechanical royalty income
25 and he's going to benefit even more from either ASCAP or BMI or

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Q. And your publishing company's perform the administrative tasks involved in collecting those royalties as well?

A. Well, we do for ourselves and for those publishers with whom we have any kind of a co-publishing arrangement or any songwriter that is affiliated with us.

Obviously, the performance royalty income goes direct to the publisher and direct to the songwriter.

Q. Would you say that your publishing companies are typical of most publishers?

A. What do you mean "most publishers"? Publishers other than those who are involved in being in the record business?

Q. Yes.

MR. ZUCKERMAN: I object to the question, Madam Chairman. It's much too vague.

MR. SHERMAN: I will withdraw the question.

BY MR. SHERMAN:

Q. Would you say that the activities that Word Music engages in are the kinds of activities that most other publishers involved in music generally would also engage in?

A. No. Most music publishers from what I see of the music publishing industry are totally passive in terms of being involved in anything to do with the promotion of copyrights. I think -- I view music publishers from what I see of them and from what I know of them as basically accounting firms who have

1 ownership of copyrights and do the things which are involved
2 in contracts where the permissions are given for those to be
3 printed or be recorded and who collect royalties and do whatever
4 other bookkeeping responsibilities they would have to their
5 songwriters.

6 Unfortunately, the way it has emerged the music pub-
7 lisher really is a passive participant and the only -- I never
8 even hear from them unless we have some confusion over a copy-
9 right. But I do not believe that they are accurately involved in
10 promoting a copyright, developing the personal interests of a
11 songwriter. I don't care whether that songwriter is a major
12 singer-songwriter or a very small person who is insignificant.

13 As I see the music publisher, they are strictly
14 interested in seeing how many of their songs they can get
15 recorded by recording companies and then obviously they have a
16 major benefit from the activity of the recording company which
17 spends tremendous amounts of money and energy and time in pro-
18 moting records which if they are successful obviously the music
19 publishing company is a major beneficiary both in terms of copy-
20 right royalty income from the sale of that record as well as the
21 tremendous amount of performance royalty income that also
22 generates.

23 Q. If I may turn your attention to the statutory criter-
24 ia in the far corner, you will note that one or several of the
25 criteria for determining a reasonable royalty rate involve the

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relative roles of the copyright owner and copyright user with respect to risk, cost, and capital investment.

Could you compare for the Tribunal the costs, risks, and capital investment undertaken by your record company as compared with that of the publishing companies?

MR. ZUCKERMAN: Madam Chairman, I object simply on the grounds that Mr. McCracken just testified a moment ago that they were integrated companies and obviously any allocation that he gives as to what is undertaken by one company as opposed to the other company is purely his hypothesis for the purpose of the testimony in this Tribunal.

MR. SHERMAN: We're asking Mr. McCracken for a comparison of his record company and his publishing company. He had said they were integrated companies in some respects and they are not integrated in bookkeeping respects. He will be able to differentiate as much as you want. You can ask him any questions on cross examination that will get at the point that you were trying to make. But I certainly think it's an appropriate question.

MR. ZUCKERMAN: But that's my point exactly. If they are integrated in all respects except bookkeeping then the only question that you're asking Mr. McCracken is how he has set up his bookkeeping. If you want to ask him what his company on the whole which includes both record companies and music publishing does, that's certainly a proper question. But since he said

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that they're integrated to ask him to construct an artificial division between the two is pointless.

MR. SHERMAN: I'm not asking him to construct an artificial division. I think that you certainly ought not to be objecting to the person who is both in the record company and in the publishing company and of this business being able to make a comparison between the functions that he performs in each of them. I think that it's vital testimony for this Tribunal and if you have any points to make about it you can certainly make them in cross examination.

THE WITNESS: Actually it's going to come out the same anyhow.

MR. ZUCKERMAN: I don't know what you mean by that but I would like a ruling from the Chair.

CHAIRMAN BURG: Objection overruled.

BY MR. SHERMAN:

Q. I'll repeat the question: Among the statutory criteria for determining a reasonable rate is a comparison of the relative roles of the copyright owner and user with respect to risks, costs, and capital investments.

Would you please compare for us the costs, risks, and capital investments undertaken by your record company as compared to that of your publishing company?

A. Yes. Well, the fact is that one of the reasons why we don't have the companies any more separated than we do is

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because of the fact that the costs are all borne by the record company. There are no costs other than editorial and financial involved with music publishing.

And I would rather think that this is pretty well typical of the way any music publishing company would be. And it is very typical of the way it works in the music industry generally. And that is that simply the copyright owner works to try to get music recorded. So what we are interested in doing is we know what music we have or what songwriters, singer-songwriters we have, and we're going to end up recording as much of our own music as we can justify recording or in some cases as we have to record in case of a singer-songwriter who is under contract to us.

And therefore, all of the risks, the financial investment and the production of a recording, the pressings of records and maintaining of inventory, the maintaining of accounts receivable from dealers and distributors, the promotional activity, the advertising activity, the marketing organization, and the management in-house that we have of that whole group of people in marketing and promotion, is all borne by the record company so that the music publishing portion is, in effect, a very passive part of our business and only performs editorial and accounting functions.

As I have said to several people many times -- and we have talked about it within our organization -- it would be

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2 super if we could be only music publishers, if somehow there was
3 another Word Record Company somewhere that would perform the
4 same functions that we're performing and we could simply sit back
5 and license our copyrights.

6 If we could make about three or four times as much
7 money being nothing but a music publisher as we are with all of
8 our 230 employees and our total sales volume that we have being
9 a record company and a music publisher.

10 The only problem with that is that if we got rid of
11 our record company and did nothing but publish music we wouldn't
12 have anybody to promote our songs.

13 Q. Have you brought an album with you to show the Tri-
14 bunal to illustrate the risk point?

15 A. Yes. This is an album which is simply one of many
16 which illustrates a new singer, a young man by the name of Steve
17 Camp. We have done two albums by him. The second one -- and we
18 put another record here as an inducement to try to make this a
19 little more attractive for people to purchase because we're
20 trying to get him established as a recording artist.

21 He also writes a good deal of music. We spent \$22,000
22 on his first album. It did not recoup. We still have about \$12,000
23 unrecouped on that album. And we have spent \$40,000 on the
24 second album which means that the reason we took this step is
25 because we believe in the potential of this artist. We have not
established him yet and if you take into consideration everything

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that we've spent, I would say that we had something like \$100,000 to \$120,000 invested in him which will take us a long time to recoup. But he is young. We feel like he has the potential to be a strong artist for a long time.

But this is the kind of speculation, hopefully, an intelligent speculation that we would make in trying to introduce a new artist. And obviously, whatever comes from the music publishing part of this album that goes either to us on the songs that we own, on this or other music publishers, that's going to be straight profit to that part of the company or to those people. And there's no participation in the cost factor either of the product or the promotion or the total investment that we are making in inventory and other aspects of handling the product.

COMMISSIONER JAMES: Did he write all the songs on the album?

THE WITNESS: Not all of them.

COMMISSIONER JAMES: How many of them?

THE WITNESS: If I'm not mistaken, he wrote out of ten songs I think he wrote eight.

COMMISSIONER JAMES: So there are two other publishing companies involved in it?

THE WITNESS: Correct.

MR. SHERMAN: Actually, there's a second disc in this album --

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THE WITNESS: Yes. I was only referring to the disc --

COMMISSIONER JAMES: The first album he made, you had a \$22,000 expenditure that you have not recouped on that first disc -- how many other records did he write?

THE WITNESS: I would have to give you an educated guess on that because I don't know exactly. If I were guessing I would say he wrote six of the ten.

COMMISSIONER JAMES: Has he received any mechanical royalties from any of those songs himself?

THE WITNESS: Oh, yes. Yes. See, his publishing incomes, he gets that. There's nothing charged against that, against his royalties on mechanical royalty income. Of course, he's also getting ASCAP income.

BY MR. SHERMAN:

Q. Let's talk a little more about costs. Walter Yetnikoff of CBS Records and Stan Cornyn of Warner Brothers REcords testified that their companies had experienced rising production costs over the last several years. And in fact there is a chart, Chart G-1 in the RIAA pre-hearing brief at Page 20 which shows the percentage cost increases that CBS experienced from 1976 to 1979.

Have you had any study done within your own company to compare the experience of Word with the experience at CBS?

A. Yes. I have a chart here, a draft --

MR. SHERMAN: Let me introduce this as RIAA Exhibit

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1 "R."

2 (RIAA Exhibit R was marked for identification.)

3 MR. ZUCKERMAN: Madam Chairman, without fail with each
4 witness we are presented with a new economics study which should
5 have been presented on April 7th. I especially note the impro-
6 priety of this study because the information from Warner Brothers
7 was presented not on April 7th but in the pre-hearing memo. If
8 other information was compiled it should have been presented at
9 least in a pre-hearing memo if not on April 7th which was the
10 proper time.

11 MR. SHERMAN: Madam Chairman, we do not consider every
12 bit of testimony or evidence that we present to constitute an
13 economic study. In preparation for Mr. McCracken's testimony,
14 he developed these figures and we saw them for the first time
15 yesterday. These are figures that were developed by his staff
16 at Word Records designed to illustrate his point. He could get
17 up there and talk generally about it or he could say the words
18 but if he presents it on a piece of paper then it becomes an
19 economic study? I think that's a distinction without a
20 difference.

21 CHAIRMAN BURG: Was that an objection, Mr. Zuckerman?

22 MR. ZUCKERMAN: Yes. It is an objection, Madam
23 Chairman.

24 CHAIRMAN BURG: Objection overruled. Proceed.

25 BY MR. SHERMAN:

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Q. Would you please explain the information contained in RIAA Exhibit R?

A. Well, this goes through the basic components of the cost of producing records, the various factors that are involved. The first one is album covers, that is, the art work and color separations that are involved. And that has gone up 75 percent in this time frame.

The manufacture of album jackets, the outside jackets, has increased by 97 percent. The inside printed sleeve cost has gone up 45 percent. Freight is 42 percent. Mechanical royalties have gone up 37 1/2 percent. Record pressings have gone up 73 percent.

The only thing we've done pretty well on is the cost of cassette and eight-track tape manufacturing, up 60 percent. Consumer space advertising is up 48 percent. Trade space within the industry publications is up 42 percent and radio promotion 35 percent.

Q. Could you compare that with the rate of inflation for the comparable period as reflected in the chart on Page 20 of the RIAA pre-hearing brief.

A. Is that 28 percent?

Q. Yes.

A. Yeah. That compares to a 28 percent increase in the average cost increases and obviously our percentages are considerably higher than that.

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Q. Now, there has also been testimony from Mr. Yetnikoff and Mr. Cornyn that they had to introduce a number of cost-cutting measures at CBS and Warner Brothers because of the industry downturn in 1979. Did Word also find it necessary to introduce budget reductions in 1979?

A. Yes, we did. We probably got the biggest scare in the history of our lives as a record company in the second quarter of 1979 when the industry generally caved in and there were tremendous returns as well as seemingly no sales taking place particularly at retail level. And we cut from 262 employees to 232 employees within a matter of two weeks. We cut \$400,000 out of our advertising budget for the rest of the year. We made as many other internal savings as we could possibly find the money.

We tightened up on credit. We had to work very hard, of course, to try to get rid of overstocked merchandise because we were getting returns back almost faster than we were shipping out products. It was one of the most frightening times I have ever experienced and it was a time for a lot of reappraisals. And we just did act fast enough because it could have been a total disaster for us.

Q. Did you make any changes in your release schedules?

A. We made major changes. We cut back -- we cut at least 12 releases out of the remaining 30 that we were to release during the rest of the year and postponed -- we changed our relationship. We reduced the number of artists that we were

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2-9 keeping on an active basis. We reduced--our number of releases in 1980 is less than we otherwise would have as a result of that.

Q Did you make any change in your recording budgets?

A Yes. That was another place. We really tried our best to put as much pressure as we possibly could on any producers and recording artists in terms of how much money could be spent on a recording because obviously that is a very basic thing. It determines how much risk you have and how much you have to overcome.

And we were convinced that we might not be able to achieve the kind of sales volume on an individual record that we had been used to. Therefore, we might fail to break even on more records that we were counting in our own figures based on the past.

Q We'll talk about break even just a little bit later. In light of the increased costs that you have described and which are reflected in RIAA Exhibit "R" and in view of the cut-backs that you have had to make in partial response to those increased costs, have you also responded by raising prices on your records?

A Yes, we have had to. We have raised prices as far as we felt we could. We have always felt that we would probably not be able to sell our records for as high a price as, say, as top records might be sold for simply because ours have not made that

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kind of tremendous demand in the marketplace although as we have moved more into contemporary music, we have been able to do a little better in that regard although I think now we are still a dollar below the rest of the market.

Most of our records sell now at \$7.98. But we did find that particularly with the last mechanical royalty rate increase from two cents to 2 3/4 cents which was a very high percentage increase and which was very burdensome to us, it forced the retail price up. It had to go up at least a dollar without question.

And from the time that that happened, we were up two dollars in retail except on one of our labels we went to \$7.98 on a label called Canaan which is in the country gospel field. And many of our artists in that field are groups who make personal appearances singing conventions and weekend appearances and auditoriums around the country and in churches. And one of the ways that they support themselves is that they sell their records at these meetings and conventions or gatherings.

And they found that when we went from \$5.98 to \$7.98 on their records, they found that there was so much price resistance that they couldn't sell the records. And we found the same kind of price resistance in the marketplace ourselves.

So from January 1st to June 30th we had gone from \$5.98 to \$7.98 and six months later we reduced it back to \$5.98 because of the pressure we were getting from the marketplace.

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And it's obvious that we just could not continue to increase prices and cover all the other cost factors that are coming to us by simply adding to the retail price. I think personally that we are pushing against a ceiling which is very real and that if we try to go beyond the present pricing structure, I think the industry will find the resistance is there in an increasing manner and in increasing amount and that we really can't do it.

And if we are forced by uncontrolled cost factors to increase the retail price in order to have enough margin to operate, I think what you will see is a tremendous number of record companies which cannot survive this. And I'm not sure we can. And I know that the smaller companies simply can't do it.

Q. Well, as you know, the National Music Publishers Association has proposed to this Tribunal that the mechanical rate be increased to six percent of the suggested list price. Assuming that the Tribunal were to accept the NMPA proposal, what would be the impact on Word Records?

A. Well, it would wipe out any hope of profit we now have unless we were able to make a major price increase and not have a reduction in sales volume. I would like to say that it would not only hurt us but I was talking to a smaller religious record company the other day, to the president of that company, and told him about this possibility. And he said, "It's the difference between survival and failure for us. This increase

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just is something we could not handle. We could not absorb.
And I'm convinced that we cannot increase prices to cover it."

And I think that it would create a disaster. And the ironic thing to me is I have difficulty understanding why the Music Publishers would want literally to kill the goose that laid the golden egg, so to speak. Because if they do punish the record industry to this extent that you're going to see serious repercussions. I think you're going to see people going out of business all over the place. And I think you're going to see a substantial reduction in the sale of phonograph records and tapes if this sort of thing happens because there's a point at which the public is going to say, "It's not worth it to buy this record."

And I can just say from my own experience and I don't really think it's that unique that I believe it's a very critical problem. And I personally question how much of the industry will survive. And in so doing, the music publishing industry itself and the songwriters who make a lot of money, are certainly going to be in trouble because if the record industry is not healthy, certainly the music publishing industry is not healthy.

CHAIRMAN BURG: Mr. McCracken, you indicated that the prices right now to the consumer are pushing up against a ceiling and that you can't absorb these additional costs, you'd have to go out of business. Well, mechanical rate aside, what if that

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stayed right where it was but any one or combination of these costs spiralled upward in the next couple of years. Would you go out of business because of that, too, or could you absorb these costs but not mechanical rate increases?

THE WITNESS: I don't think we could absorb any increases there either.

CHAIRMAN BURG: But as a practical matter-- you know, I would like to believe that you're right, that the prices won't be going up but as a practical matter, it strikes me that all your resource prices will by necessity be increased over the -- within another year much less the next seven years.

THE WITNESS: I would like to hope that that can be avoided. We have to use all the creative imagination we can to prevent that from happening. And I suppose the last place I would prefer to cut back on things would be in the area of promotion and advertising. That's an obvious place that when you start cutting expenses you frequently start there.

CHAIRMAN BURG: Is it easier for someone in your position because you are a synergistic company, could you affect those economies all the way across the -- all the way through the steps because you are synergistic? Does that give you an advantage that other record and/or publishing companies don't have?

THE WITNESS: Well, I don't think so. I don't know that it does. I can't pinpoint where that would particularly

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2 help other than we do have copyright royalty income and per-
3 formance income that does help. If we lost money in the record
4 company, it might be that we could make enough money out of
5 publishing to counterbalance the loss. I suppose that might be
6 what you're thinking about.

7 CHAIRMAN BURG: If you had to make a bet today, would
8 you bet that prices in the resource area would indeed go up or
9 would you bet that they would not?

10 THE WITNESS: I personally don't see how they could go
11 up any more. Most of the record pressing costs have gone up
12 because of the petroleum situation. I don't know whether that's
13 going to stabilize or not. That's a factor that we obviously
14 can't totally control. But we will have to find ways of cutting
15 some of these other areas.

16 We may have to find that we have to go to cheaper
17 album covers. There has been a tremendous amount of money spent
18 in our industry in the area of the quality of art work of album
19 covers because of competitiveness of trying to get attention in
20 a store where there are hundreds of albums on display. So sub-
21 stantial amounts of money have been spent there.

22 Substantial amounts of money, as you probably know,
23 are being spent in recording studios. And I would say that some
24 changes are going to have to take place in those areas, the
25 quality of a recording, the number of musicians that are used,
the number of producers and other technicians that are used,

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1 those would be the places that I would try to cut first .

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3 I feel that we have to try to cut in every possible
4 area that would keep us from losing our ability to market the
5 product. And that's why a fixed cost, like the cost of copy-
6 right royalties is a major problem. It's the reason that we're
7 here literally fighting for our lives. Because this is one that
8 doesn't have to increase and it's already overpaid. In my
9 judgment, the 2 3/4 cents royalty that was imposed earlier was
10 too much and shouldn't have happened. And I really feel that if
11 anything we should have a reduction. And it would be to the
12 benefit of the music publishers and the songwriters if there was
13 a reduction because they would be healthier because it would
14 make the record industry healthier and it would be possible for
15 us to continue to sell a lot of records.

16 And the people who are making all the money off the
17 sale of the records are not the record companies. Literally,
18 the music publishing companies are making the money.

19 CHAIRMAN BURG: That's an interesting premise. If this
20 Tribunal reduced the price would you reduce the price to
21 consumers?

22 THE WITNESS: I would love to, yes.

23 CHAIRMAN BURG: You mentioned before that when it went
24 up from 2 3/4 cents, I think you said you raised the price --

25 THE WITNESS: A dollar.

CHAIRMAN BURG: -- a dollar, would you conversely cut

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the price by a dollar just because of that 2 3/4 cents?

THE WITNESS: Yes, I would. I think we have to think in terms of the best way to get to a reasonable cost for this industry because it's tremendously out of hand right now. And for all who have an interest in it, and believe me, the music publishers have the greatest interest of anybody, because they make more money out of this than anybody in my opinion.

And they should be trying to do whatever they can do to make this industry healthy and not to take every last cent that they can possibly get.

COMMISSIONER GARCIA: Does your publishing company make more money than your record company?

THE WITNESS: Yes. And if I just took the publishing company by itself and eliminated the record company, I could improve my profits by almost four times if somebody else could do what the record company does.

COMMISSIONER GARCIA: Have you given serious consideration to doing this?

THE WITNESS: Yes, but I can't find out how those records would get sold and promoted, you see.

COMMISSIONER GARCIA: Why can't you do both?

THE WITNESS: Well, that's what we are doing. But that's the reason the music publishing company is more profitable than the record company is because the record company bears all the burden of the cost of the promotion, you see, and

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distribution and marketing.

COMMISSIONER GARCIA: In your case, wouldn't that just be an allocation, a re-allocation of your costs? In other words, if you extended the activities of your publishing company to cover more promotion and so forth, wouldn't that -- like you told Mr. Zuckerman a while ago, the answer would be the same?

THE WITNESS: Well, the answer would be there is no allocation really to be made against the music publishing company because all of the efforts and expenses involved in creating the sales of records and the play of records on radio stations and on television comes about through the promotional arm, the promotional group that is responsible to promote and sell records.

So the royalty income then comes back from that to the publishing company. It doesn't really have to do anything. It's really not a participant either -- and that's true, that's true in record companies that do not have their own publishing companies. It's true with music publishers who are not in the record business. See, they do not get themselves involved in the sale and promotion of records. They simply are passive recipients of what is done by the record company.

COMMISSIONER GARCIA: Now, in your case is that just a management decision or could that be done?

THE WITNESS: Where the music publishing company did get involved?

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1 COMMISSIONER GARCIA: Yes.

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3 THE WITNESS: No. It is not just a decision that we
4 make because music publishing came later. And we got into it
5 because it was obvious that we had developed the marketing
6 organization and the promotional organization that could sell
7 records. Therefore, if we became involved in the ownership of
8 copyrights then we would be somewhat the recipient of the work
9 that was being done and the effectiveness of our promotion and
10 marketing organization in the record company.

11 So the music publishing company was added after the
12 fact, after this other part was already established and
13 functioning.

14 COMMISSIONER GARCIA: Are the companies basically
15 located in this same building?

16 THE WITNESS: Yes, they are.

17 MR. SHERMAN: I think that notwithstanding whatever
18 Word might be able to do there is very little question on the
19 record about the promotional role played by music publishers
20 as compared with record companies in terms of promotion.

21 MR. ZUCKERMAN: Now is not the time for argument.

22 CHAIRMAN BURG: The point is well taken, Mr. Zuckerman.

23 BY MR. SHERMAN:

24 Q. Mr. McCracken, Chairman Burg has properly asked you
25 about the record company cost increases noted on RIAA's Exhibit
"R" and by comparison with the mechanical royalty rate. Despite

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the enormous range of increases here from 1976 to 1979, did any one of these increases by itself amount to a 25 cent increase in the price of a record overnight which would be the case under the NMPA proposal?

A. No.

Q. I said "price" of a record; I meant "cost" of a record.

A. No.

Q. You have talked about the impact that the rate increase would have on your company. Why couldn't you bargain for a lower rate? The economist who has appeared here on behalf of the National Music Publishers Association suggested that the six percent royalty would not really be the rate, it would merely establish the ceiling below which there would be bargaining. Couldn't you bargain for a lower rate?

A. I've tried that numerous times in the past and I think it would be very unfortunate if anybody believed that that could happen. In the past numerous times we have tried to bargain with two or three of the major music publishing companies as well as some of the others because we had a certain situation in which in order for us to economically justify a record being sold at a special price for which we had what we felt was a good marketing reason, we have tried numerous times to get music publishing companies to agree to a reduced mechanical rate for a specific situation that we felt was justified. It would help

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promote their song. It would help us promote our artists, et cetera.

And I've not only found them unwilling but totally discourteous and almost with the attitude that it was preposterous for us to even suggest this sort of thing. Therefore, I have to conclude that based on my experience with music publishers in the past to suggest that this be done with the idea that there is going to be room for negotiation would be ludicrous.

I do not think there will be negotiation with music publishers.

Q. Let's talk about your existing licenses, for example, from the Fox Agency. Do most of your mechanical licenses come from the Harry Fox Agency?

A. That's correct.

Q. And what royalty rate do those licenses specify?

A. Well, they are based on the statutory rate. Therefore, whatever happens to the statutory rate they will change accordingly.

Q. What about your artist contracts where you have clauses governing the mechanical royalty payments? What royalty rates do those artist contracts specify?

MR. GREENMAN: Madam Chairman, I would object to this question unless this witness is prepared to make those contracts available without the name but -- we've already had a chart here

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1 without any explanation of where it came from -- I expect to
2 pursue that on cross. We now are asking for descriptions of
3 documents. I think we should be able to see the documents in,
4 order to be able to cross examine the witness if he's going to
5 talk about them.

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7 MR. SHERMAN: It seems to me that a witness under oath
8 who is the president of a record company and is familiar with
9 artist contracts can testify about a specific provision in his
10 artist contracts without having to produce the entire document
11 which may be competitively sensitive.

12 If Mr. McCracken is willing to make copies of those
13 documents available in some form to the Tribunal and Mr. Green-
14 man, that's Mr. McCracken's choice.

15 But I certainly think that it's not a proper objection
16 for a witness under oath who is certainly knowledgeable about
17 the response to the question.

18 MR. ZUCKERMAN: Madam Chairman, I join in the objection
19 and also note that under the Federal Rules of Evidence and I
20 think under any evidentiary rules with which I am familiar,
21 there is a best evidence rule which requires that when a document
22 is the subject of the inquiry that the best evidence and the
23 only admissible evidence is the document, but not a description
24 of the document by the witness.

25 MR. GREENMAN: Apart from the rules of evidence, Madam
Chairman, the authorities or some of them, at least, are in that

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2 memorandum, a motion which I just handed up this morning but
3 it obviously is impossible for us to conduct any effective
4 cross examination to get at the facts if the witness is able to
5 simply give his summary of the document and then we can't go
6 behind it to the actual document he's talking about.

7 CHAIRMAN BURG: It strikes me as a good time for a
8 recess. So ordered.

9 (A short recess was taken.)

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1 CHAIRMAN BURG: Mr. Sherman, the objection is
2 sustained.

3 MR. SHERMAN: Madam Chairman, we would like to
4 make an offer of proof that the contracts, additionally, it is
5 the traditional practice to specify the statutory rate. We
6 will determine if we can obtain contracts to submit to the
7 Tribunal through testimony.

8 BY MR. SHERMAN:

9 Q Instead of talking about the artist contracts,
10 let's just focus then on the Harry Fox -- I think you
11 already testified about that. Okay. What, in your judgment,
12 would the impact of a rate increase be on the lesser known
13 and struggling songwriters?

14 A Well, I think they would be hurt the most. First
15 of all, the lesser known or so-called struggling songwriters
16 are very much left out in this industry. Most of the mechani-
17 cal royalty income, and performance income, goes to the large
18 artists who are singer-songwriters and a few other songwriters
19 who are well established and well known.

20 And obviously, if you have a rate increase,
21 those are the people who are going to get that money. It is
22 not going to go to the struggling songwriter. And I think to
23 use that sort of emotional appeal would be erroneous, because
24 I think the only way a struggling songwriter is helped is if
25 somebody decides to pick up his cause and work very hard on

1 his behalf, take his songs to record companies to get it
2 recorded and properly promoted. But the way things exist now,
3 in this industry, the large participants, the ones who get
4 the large slice of any financial income which comes, will
5 be those people who are in a position to demand that their
6 songs be on record; and pretty much, that is in the case of
7 the well-known songwriter and/or the singer-songwriter who
8 is a major recording artist and has a tremendous amount of
9 clout with record companies.

10 Q Have you found that the singer-songwriters have
11 been very concerned about their struggling brethren in terms
12 of helping them get recorded?

13 A No. I don't think the singer-songwriter has a
14 great deal of compassion toward the struggling songwriters.
15 I don't even think he knows they exist, in fact.

16 MR. COULTER: But he was likely one at one time.

17 THE WITNESS: I don't think so. I think the way
18 these people -- I personally believe that the way they have
19 become songwriters is that they were first recording artists
20 and singers and they gained their reputation that way, and
21 then be being a popular group, that was very important recor-
22 ding artist for the label, then increasingly they see the
23 benefit of writing their own songs or else owning the songs
24 that they record, if somebody else writes them.

25 MR. ZUCKERMAN: Madam Chairman, I am not objecting

1 to this, but I would like both Mr. Sherman's questions and
2 Mr. Mc Cracken's testimony to specify whether he is talking
3 about the experience of Word Inc. or whether he is giving
4 his beliefs or conjectures as to the entire industry,
5 because I think otherwise, we will have a very confused
6 record.

7 THE WITNESS: First of all, I am talking about
8 my own experience, but I am familiar enough with the record
9 industry in general, having been a member of the Board of
10 Directors of RIAA for -- must be about 15 years or so, I am
11 very familiar with the industry -- and I am rather confident
12 that our experience parallels the experience of the industry
13 from what I can gather, talking to the heads of other compa-
14 nies.

15 BY MR. SHERMAN:

16 Q Well, you have talked about the financial impact
17 on the mechanical rate increase; what other kind of steps
18 would you have to take in the way of cost cutting measures
19 if you were going to try and ensure the survival of Word
20 Records?

21 A Talking about --

22 Q Assuming a rate increase.

23 A Well, I think that we would have to become very
24 drastic about it. I mentioned earlier that I think we would
25 have to try to do something about the cost of recording

1 sessions and I think we would probably have to reduce the
2 quality of album jackets and the cost involved there. I
3 think we would have to see whether we could cut other
4 costs, and that would have to probably include money that
5 is spent on promotion and money that is spent on marketing.

6 It would take, I am sure, some reductions in
7 general overhead, you would have to reduce the flow of
8 these. You would have to -- we would have to reduce our
9 cost of functioning as a company. And I would think that that
10 would in turn mean that you would record fewer albums;
11 you would have to cut down on the number -- the amount
12 of product that you produced, and the marginal product is
13 the product that is going to suffer the most. And this is
14 where, again, the struggling songwriter as well as the
15 struggling recording artist trying to get started -- record
16 companies are going to have to reduce their activities to
17 those that they know will sell and do less in what would be
18 called research and development, doing something to explore
19 and try to develop new talent.

20 I don't think you would have enough money to
21 be able to do it. When you are in a real financial crunch,
22 you have to struggle with every possible area of cost study.

23 Q Let's talk about the impact of rate increase from
24 a different perspective. During Mr. Abram's cross examination
25 of Mr. Gortikov, he questioned whether the break even point

1 that was reflected in the CRI study, was the same for
2 small record companies. The CRI data reflected a breaking
3 point of 140,500 albums and I believe Mr. Gortikov stated
4 that the breaking point for smaller companies would be lower.

5 What do you estimate to be the breaking point
6 for Word?

7 A It is between 60 or 65 thousand albums.

8 Q Mr. Abram's question -- now, the questions at
9 least to me seemed to imply that if you had a lower break-
10 even point, and somehow the impact of a rate increase in
11 small record companies would be lessened, do you think
12 that in fact impact of a rate increase would be any less
13 for you because your breaking point is lower?

14 MR. ZUCKERMAN: Objection. He can testify as to
15 what the impact would be but he can't make a comparison.

16 MR. SHERMAN: I am just asking him to make a --
17 I don't see why he can't. I mean, he is just making an
18 analysis. He is comparing his experience as a small
19 company with the experience that he believes that is
20 typical of large recording companies.

21 MR. ZUCKERMAN: Well, the latter part of your
22 statement is the reason for my objection. His belief as
23 to the experience of large recording companies, and there
24 is no basis for that belief.

25 MR. SHERMAN: I believe Mr. Mc Cracken is fairly

1 qualified as an expert on the recording industry generally
2 not just on Word Records, having been a member of this
3 industry I don't know how many years.

4 BY MR. SHERMAN:

5 Q How many years?

6 A 28.

7 Q 28 years in the recording industry, I think that
8 he can speak knowledgeably about this issue. Mr. Mc Cracken,
9 do you feel that you can afford a rate increase with your
10 break even point as it is?

11 A No, there is no way we can.

12 Q What would you say is the outer limits of the
13 market for your recordings in terms of volume?

14 A Up to this point, the most that we have been able
15 to achieve on our best selling albums has been 400,000 copies,
16 so that is presently outer limits. I don't know if we can
17 go beyond that. I know that we obviously do not have the
18 capability of achieving several million sales of an
19 album, which breaks into a number one seller on the charts,
20 and that sort of thing, that is not possible for us,
21 because that is not the business we are in.

22 We are into much more sedated type of industry
23 which is obviously not the total population of the country.
24 We are speaking to a much smaller segment of the population
25 here and the interest level of the product that we do is

1 specialized.

2 Q So your break even point is lower but your
3 opportunity for volume is also lower.

4 A Yes.

5 Q I see.

6 CHAIRMAN BURG: Mr. Mc Cracken, how many other
7 companies try to attract the same audience with product
8 that you attract?

9 THE WITNESS: Something like 10 or possibly 12.

10 CHAIRMAN BURG: And are they likewise relatively
11 small, specialized companies?

12 THE WITNESS: Yes. They are smaller than we are.
13 We are the largest in our field. They range on down to
14 companies that would be very, very small, maybe one-
15 fiftieth of our size.

16 BY MR. SHERMAN:

17 Q May I ask you another question with respect
18 to the CRI survey. Is it correct that Word Records did
19 not respond to the CRI survey?

20 A That is correct.

21 Q Can you explain why it did not?

22 A Well, it is just a matter of -- a matter of limited
23 personnel and resources, to compile that much finan-
24 cial information. It caught us at a time when we just
25 didn't have time to do it properly.

1 Q Let's turn now to the specific proposal to
2 publishers for mechanical royalty increase to 6 per cent
3 of suggested list price. How much do you calculate your
4 record company would have to pay in increased royalties
5 if the Tribunal were to accept the music publishers' proposal?

6 A I would say it would at least double what we have
7 to pay. It would increase us by something like 24, 25 cents
8 a record.

9 Q Now, the publishers -- and what would the impact
10 on the profits of that rate increase --

11 A It would obliterate our profits. In fact, it
12 would be a loss.

13 Q Now, the publishers have presented testimony that it
14 would as an administrative matter, simple to implement their
15 percentage proposal. Would you comment on the costs in-
16 volved in converting the current mechanical royalty payment
17 system to a percentage system?

18 A That it would be simple to administer?

19 Q That is correct.

20 A I don't understand. I would like -- maybe there
21 are areas that I need to be enlightened on. I would say
22 that it would complicate things tremendously. It would mean
23 re-programming the computer, it means re-establishing files
24 on copyrights, it means revamping everything we do, all of
25 our reporting, all of our accounting, and plus, I think it

1 is going to complicate even further in determining how
2 much we pay on each tune and how that is to be computed.
3 I think this introduced a factor that is going to add
4 substantially to overhead. There is no way that we could
5 handle that without substantial amount of increased costs
6 internally. It is much more complex that at a fixed rate.

7 Q One final question, Mr. Mc Cracken. You are in
8 the record business and in the music publishing business.
9 It might seem therefore that no matter which side prevails
10 in the proceeding, you would stand to gain. Could you
11 please tell the tribunal why you are testifying on behalf
12 of the Recording Industry Association of America?

13 A Well, I think perhaps I alluded to this a little
14 bit already, in that I thought about it quite a lot, and
15 my thinking leads me to the conclusion that as a music
16 publisher I will be substantially harmed if this kind of
17 rate increase produces substantial damage to the record
18 industry, and I recognize very clearly and see it very
19 clearly, because of the two functions that we perform in
20 our company, that the publishing company is only healthy
21 if the record company is successful and healthy. Therefore,
22 in choosing, I recognize that it is a false hope, it is a
23 false economic melage, really, to even think that the
24 publishing companies are going to end up really benefitting
25 from this, or the songwriters are going to benefit from this.

1 What I think is going to happen is, I think
2 this is bad for the music publishers and songwriters. I
3 think this is a very foolish step to suggest, because if
4 anyone looks objectively at the economics of this industry,
5 it cannot sustain this kind of increase. And I am being
6 as fair and open as I know how to be. And I can tell you
7 from the standpoint of our company that we cannot absorb
8 this, that we can not handle it, that it would force us
9 into a lot of things which I have mentioned before, various
10 kinds of cost-cutting.

11 I do not think we can get by with continuing
12 to increase the retail price of phonograph records, and
13 therefore, I think it is going to be severely
14 damaging and I am looking out for the total company and the
15 music publishing part of our company can only survive with
16 the success of the record company and the record company
17 if it is mortally wounded, then so is the publishing company.
18 Therefore, I am fighting as hard as I know how, a last ditch
19 effort to hope that this won't happen.

20 MR. SHERMAN: Thank you, Mr. Mc Cracken. Madam
21 Chairman, we have no further questions.

22 CHAIRMAN BURG: Mr. Mc Cracken, how many song-
23 writers do you represent in terms of publishing -- in the
24 publishing company?

25 THE WITNESS: I have to give you an estimate on that.

1 And I would say it would be in the range of 60.

2 CHAIRMAN BURG: In the range of 60; and when
3 you produce the record, again, some kind of a ballpark
4 estimate with respect to how many of your own songs or
5 how many songs the publishing company recorded on the record.

6 THE WITNESS: At the present time, that would
7 be about -- something between 20 and 25 per cent --

8 CHAIRMAN BURG: That are --

9 THE WITNESS: That would be either --

10 CHAIRMAN BURG: In your stable, so to speak.

11 THE WITNESS: Yes. Either co-owned with a singer-
12 songwriter or owned outright by one of our composers.

13 CHAIRMAN BURG: Thank you.

14 MR. COULTER: Mr. Mc Cracken, you mentioned that
15 recovering the recording costs is one of your major consi-
16 derations when you come out with a record. Since you own
17 the publishing share of songs, do you ever use that share
18 or have you ever even considered it, or why would you consider
19 using that share to help recover the recording costs?

20 THE WITNESS: I would say in the final analysis
21 if it came down to a very close decision on something that
22 almost broke even but didn't quite, that we could justify
23 the album by what we got in the publishing part of it, so
24 it would be considered.

25 MR. COULTER: I don't understand.

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1 THE WITNESS: Let's say that we had an album that
2 we spent \$40,000 on and it recouped down to where we still
3 had \$10,000 unrecouped from the sale of the album itself.
4 And let's say we had gotten that much money from mechanical
5 royalties and ASCAP income, then I think we could say that
6 we did all right. I mean we didn't make anything, but we
7 could say that we could justify the album, and if that artist
8 was strong enough that the next time out that we had some
9 improvement in sales. So it, we do take it into consideration.

10 MR. COULTER: Okay, do you -- what you just said,
11 though, is it correct that -- is one of the major thresholds
12 when you put out an album the recovering of these recording
13 costs, and do you consider it on the way to be a success
14 once that is done?

15 THE WITNESS: Yes.

16 MR. COULTER: And it is successful?

17 THE WITNESS: Yes, I would say once it has
18 recovered recording costs it is a success. Now, we can't
19 live on albums like that, but we would feel that if we got
20 that much response from an album the first time, that we
21 would have a very good basis to build on. It is like
22 example I showed you the Steve Camp record earlier, even
23 though the first two haven't come out, we still see the
24 potential there, and we are willing to invest in that and
25 hope that it will happen. If we broke even the first time
or the second time, then we would feel that we were on the

1 way to developing this artist into a viable artist.

2 MR. COULTER: IN trying to make a determination
3 about the success of a record, you have got the recording
4 costs that you haven't recovered and on these new albums,
5 for instance, the recording costs that you do recover through
6 the artist royalties, would it be fair to say, in just
7 looking at the career of an artist, that you would get --
8 some kind of financial sense of the success of that artist
9 or even a record by comparing recording costs, both un-
10 recouped and recouped and artist royalties.

11 THE WITNESS: By comparing --

12 MR. COULTER: The recording costs both recouped
13 and unrecouped and artist royalties. Would that give you
14 some financial sense of the success of an individual record,
15 obviously or a -- or the career of an individual -- of a
16 singer-songwriter?

17 THE WITNESS: Yes. If his artist royalties were
18 basically equal to what we had invested in his records, that
19 would really bring us to a break even point.

20 MR. COULTER: But then if he were successful,
21 it would compare the royalties made over that with the
22 recording costs to get some over all sense --

23 THE WITNESS: Yes. to see how important he really
24 is. As an artist.

25 MR. COULTER: Would you say that in looking at
your operation, that you could make that comparison, that

1 that would be a ratio of financial success between your
2 unsuccessful records and successful records, by comparing
3 recording costs, both recouped and unrecouped and artist
4 royalties, say for a given year?

5 THE WITNESS: Yes.

6 That would be a very good barometer.

7 MR. COULTER: Okay.

8 You mentioned that there were a lot of singer-
9 songwriters that control publishers in the religious music
10 industry, just as there are in the industry at large. How
11 -- and you indicated that your publishing operation is
12 quite profitable. How did the existence and the maintenance
13 of -- in your -- and the maintenance in your inventory
14 of records, of controlled publishers, how does that affect
15 your publishing?

16 THE WITNESS: The inventory itself?

17 MR. COULTER: I haven't stated that properly.
18 Let me try this again.

19 Controlled publishing income obviously does not
20 go to your publishing company.

21 THE WITNESS: Where we have joint ownership
22 of publishing?

23 MR. COULTER: No, when you say singer-songwriter
24 is a controlled publisher, and I gather that is a very dominant
25 phenomenon. When you -- the income of your controlled

1 publisher does not go to your publishing company, is that
2 correct?

3 THE WITNESS: We have no involvement in it. It
4 goes directly to that publishing company, mechanical
5 royalties, and the performance royalties go directly to
6 whatever publishing company it is.

7 MR. COULTER: But it is the individual in that
8 case, isn't it?

9 THE WITNESS: In that case, it is -- or if he
10 has a publishing company that has a certain name that he
11 gives to it, it could be an individual proprietorship or
12 he could form a corporation or whatever.

13 MR. COULTER: But it is essentially by itself?

14 THE WITNESS: It is. But our relationship with
15 it would be just as it would be with any other outside
16 publisher.

17 MR. COULTER: All right. Of your -- let me try
18 this a different way. Of the records you produce in a year,
19 how many of those are singer-songwriter controlled
20 publishers?

21 THE WITNESS: It is about 25 per cent.

22 MR. COULTER: Are singer-songwriter controlled
23 publishers, and the rest are composers and the artist is
24 different?

25 THE WITNESS: Yes.

1 That 25 per cent would include those in which
2 there are singer-songwriters in which we have a part
3 ownership with them, like either a 50-50 or sometimes
4 we have 25 per cent and they have 75 per cent.

5 MR. COULTER: Okay, what --

6 CHAIRMAN BURG: I got lost on that. You said
7 25 per cent are controlled singer publishers, and then you
8 asked, and the other 75 per cent are performer writers or --
9 singer writers, is that what you have said?

10 MR. COULTER: My understanding of what I said
11 is that 75 per cent remaining are in the traditional
12 category of composers separated from the artists.

13 THE WITNESS: Yes, the 25 per cent would be singer-
14 songwriters --

15 MR. COULTER: And controlled publishers?

16 THE WITNESS: Yes.

17 MR. COULTER: And the remaining 75 per cent are the
18 composers separate from the performer?

19 THE WITNESS: Well, separate, no. There would
20 be another -- there would be 25 per cent that we own our-
21 selves or are owned jointly with a singer-songwriter. In
22 other words an average of the 25 per cent of the songs
23 on our records would be copyrights that we own or that we
24 have an interest in with someone else.

25 MR. COULTER: And 25 per cent are controlled

1 publishers that you have no interest in?

2 THE WITNESS: Well, 25 per cent of the singer-
3 songwriters. The other 50 percent would be other publishers
4 -- outside publishers.

5 MS. GARCIA: But as far as you are concerned,
6 75 per cent is outside of your publishing company?

7 THE WITNESS: That is right.

8 MR. COULTER: Let's just say that 25 per cent --
9 you own 25 per cent of controlled publishers and 50 per
10 cent are --

11 THE WITNESS: Outside.

12 MR. COULTER: Outside, and to your knowledge they
13 are people who constitute the traditional relationship of
14 the composer being separate from the artist?

15 THE WITNESS: Yes. And there is a strong trend
16 out of that singer-songwriter group, that 25 per cent there
17 is increasing very rapidly. I would say that it will soon
18 be 50 per cent.

19 MR. COULTER: Those who own their own companies?

20 THE WITNESS: That is right. And are recording
21 artists.

22 MR. COULTER: What I am really trying to get the
23 handle on is how does the controlled publisher, which is the
24 growing phenomenon, as you just said, and certainly -- how
25 does that affect your income as a publishing company? To

1 what extent?

2 THE WITNESS: Well, what it has done, it has
3 -- I think maybe I can illustate it something like this.
4 At the time that the 2-3/4 cent statutory rate increased,
5 we were averaging 14 cents per album, copyright royalties.
6 And as this developed, it caused a tremendous increase
7 in songer-songwriters all of a sudden, and a much greater
8 demand for their songs to be on our records, so what has
9 happened now is that a tremendous increase in the number of
10 songs on our albums are copyrighted by outside people and
11 we have had a decrease, substantial decrease, gone from
12 10 years ago, 25 per cent of the songs on our albums were
13 public demand, in '79, 3 per cent were public demand. That
14 is the reason we could average 14 cents prior to the time
15 when the 2-3/4 cent rate went into effect.

16 Since the 2-3/4 cent rate went into effect, we
17 are at almost 25 cents a record.

18 MR. COULTER: That you get?

19 THE WITNESS: That we pay in copyright royalties.

20 MR. COULTER: Is thin including the publisher's
21 share?

22 THE WITNESS: No, this does not include our
23 publisher's share. It does include -- it is what we pay out.

24

25

1 MR. COULTER: Does the controlled publisher,
2 how has that affected your income as a publishing house,
3 has it reduced it?

4 THE WITNESS: Yes, it has increased our mechanical
5 royalty payments. It has increased our average from 14
6 cents to 25 cents a record.

7 MR. COULTER: Is that because you are losing
8 more of the publisher's share?

9 THE WITNESS: It is because we have fewer of our
10 own copyrights or of public demand songs and more
11 that are owned by artists and his publishing house. It
12 has simply forced us to have more copyrighted songs on our
13 albums or more songs that we do not have of our own.

14 MR. COULTER: Okay, just one more last question.
15 Do the other religious record companies that you are familiar
16 with, they have -- do they own their own publishing houses
17 generally?

18 THE WITNESS: Most of them do. Several of them --
19 all of them own some publishing. Several of them -- two of
20 them, at least started into the record business because of
21 their music publishing operations and decided to enhance the
22 value of the music publishing by getting into a record company.
23 And then those others who have started since, say, the last
24 six or eight, 6-8 years, have started with the publishing
25 companies of their own also. Even though they started as

1 record companies.

2 MR. COULTER: Thank you very much.

3 CHAIRMAN BURG: I think what we will do is, given
4 time -- we will recess until 1:30 today and then go into
5 the cross.

6 (Whereupon, the hearing was recessed until 1:30 p.m.)
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A F T E R N O O N S E S S I O N

CHAIRMAN BURG: Mr. Greenman.

Whereupon,

JARRELL MC CRACKEN

resumed as the witness and, still under oath, was
examined and testified further as follows:

CROSS EXAMINATION

BY MR. GREENMAN:

Q Mr. Mc Cracken, just so you understand the cast
of characters, I represent the American Guild of Composers.
I have looked at Exhibit R, your schedule. Who asked you
to prepare this?

A We chose to do it ourselves, as it was motivated
partly by the fact that I knew I was going to be here and
that we do things like this on a regular basis, because
it helps to know what is happening in our company.

Q Did you have any discussion with anyone from
RIAA or counsel about this schedule before you prepared it?

A Not about this schedule. I was asked about
various things in terms of our company and our expenses
and how this particular matter of mechanical royalties
affects us, and so we just felt that we needed to look at
the whole thing and see what it was in perspective.

Q How did you pick the time period for that,
1976-1979?

1 A It coincided with the figures that were done
2 in the industry, and we have the CPI index for that same
3 period of time, which gave us something to relate to and
4 see how it would do.

5 Q You had seen the data supplied by Warner?

6 A No, I had not seen the data supplied by Warner.

7 Q Or by CBS?

8 A I hadn't seen it. I knew it existed, but I
9 hadn't seen it.

10 Q Tell me again where you got this '76-'79 time
11 period from?

12 A I'm not sure whether that was the period that
13 CBS used for theirs or the Cambridge Institute used.

14 Q And you followed the same time period that they
15 used?

16 A Yes.

17 Q And before you prepared this chart, you are
18 telling me you had no discussions with counsel or with anybody
19 from RIAA?

20 A No, I had discussions all along.

21 Q About this chart.

22 A Not about this chart. No. Just about the kind
23 of information that I would be asked about as a witness.

24 Q Well, who suggested that you collect the data for
25 the period '76-'79?

 A I can't tell you; I have no idea; I don't think

1 anybody suggested it.

2 Q You came up with that time interval yourself?

3 A No, we had the Cambridge report and the -- and
4 we knew of CBS, but I have not seen the CBS statistics.

5 Q Well --

6 A I simply knew that that time frame had been used
7 to give CPI figures. It is convenient for us to use that.

8 Q Well, did you discuss those figures with counsel
9 for RIAA or anybody else from RIAA before you prepared the
10 chart?

11 A No. I only knew they existed and that is all.

12 Q Now --

13 A I have only seen the CBS figures since I have
14 been here.

15 Q Let's see. And you -- but you knew somehow that
16 they had prepared data for that time period?

17 A Yes, I knew that.

18 Q How did you learn that?

19 A Well, it could have been from about 6 different
20 sources. I honestly don't -- I can't tell you. It could
21 have been from somebody in RIAA. It could have been through a
22 number of other sources in the industry; it could have been
23 through some discussions with the law firm which represents
24 us in this proceeding. I just cannot say. I honestly
25 don't know.

1 Q By the law firm that represents you, you
2 mean Armour and Porter?

3 A Yes. Because at various times I was told in
4 general terms what kind of information would be needed for
5 my appearance here.

6 Q What were you told and by whom?

7 MR. SHERMAN: Mr. Greenman, I hesitate to raise
8 objection, but number one, your questioning is beginning
9 to invade any traditional attorney-client privilege or any
10 traditional privilege gap between a lawyer and a witness,
11 and second, I fail to see the relevance of the entire line
12 of questioning. It would be useful to know what -- if you
13 have any questions about the data, why don't you ask about
14 the data?

15 MR. GREENMAN: Let me hold the question, and I
16 will come back to that.

17 BY MR. GREENMAN:

18 Q If you had picked the period starting earlier than
19 1976 you would show larger increases for every item on here,
20 would you not, except mechanical royalties.

21 A No, sir, mechanical royalties would show a still
22 sharper increase. If you would like for me to provide that
23 information, I would be glad to.

24 Q Well, I don't understand, the 37-1/2 per cent
25 was the 1978 increase, isn't that right?

1 A Yes.

2 Q Was there an increase in the mechanical rate
3 prior to 1978?

4 A No, but it relates to the number of public
5 domain songs that we were able to incorporate in our albums
6 prior to that time, where substantial, as I mentioned earlier,
7 it has gone from 25 per cent down to 3 per cent in the last
8 9 years.

9 Q In the last 9 years.

10 A Right.

11 Q If you could carry this 37-1/2 per cent over,
12 is simply the rate increase of 78, is that right?

13 A You mean on these numbers?

14 Q This number right here.

15 A That is primarily on this budget here.

16 Q Well --

17 A Because that is what happened.

18 Q Well, let me go ahead. The other items on here
19 would also show cost increases if you went back before that,
20 is that right?

21 A Yes.

22 Q And they would show increases in every previous
23 year, would they not?

24 A Well --

25 Q And possibly minor excpetions.

1 A I couldn't swear to that but I would say that
2 there has -- although there was a long period of time when
3 we did not have any increase, in the cost of either album
4 jackets or separations or record pressing. They were
5 stable for a long time.

6 Q That is the top item on here. Is that right?

7 A What?

8 Q Artwork, covers, you said?

9 A Well --

10 It refers to album covers, album jackets, album
11 sleeves and then record pressing. Those have all been stable
12 for a long time until the last three years.

13 Q What is the cost either in gross figures for
14 '79 or per album in cents of the first item you have here,
15 covers, artwork, and separations?

16 A I am sorry, I don't understand the question.

17 Q You have got a percentage increase.

18 A Yes.

19 Q From one value to another. First of all, you have
20 got per album or gross for your company?

21 A No, that is per item.

22 Q All right, what is the final figure now, after
23 the '75 increase per album?

24 A You mean how many cents does it cost us? I don't
25 know. I don't have that figure. I would be glad to get

1 it for you.

2 Q Do you know that for album jackets?

3 A No.

4 Q Do you know it for any of these things on here?

5 A No.

6 Q You know the starting figures in cents per --

7 A I didn't do this work personally.

8 Q Who did it?

9 A Our branch manager.

10 Q Who?

11 A We have some people who do accounting --

12 Q Well, who are we talking about now?

13 A -- for our company on a regular basis. I am not
14 an accountant, is what I am trying to say.

15 Q All right, who is it that did this work?

16 CHAIRMAN BURG: Have you caught up with that?

17 BY MR. GREENMAN:

18 Q Who did this work?

19 A It was under the direction of our vice president.

20 Q Well, do you know who did it?

21 A Well, he did it. He and his staff did it.

22 Q Do you know who on his staff did it?

23 A No. No, I don't.

24 Q What is the name of your financial vice president?

25 A Tom Wolf.

1 Q Did you review the calculations by which
2 these figures were arrived at?

3 A Personally?

4 Q Yes.

5 A No. He is an experienced CPA and a person of
6 integrity and I trust him with a lot of things, and so I don't
7 think it is necessary for me to double check his figures.

8 Q Do you know how the calculation was made?

9 A I would guess. I know that it was --

10 Q All right. Tell me what you know exactly how the
11 calculation was made and tell me how you know it.

12 A We simply went back and found out how much we pay
13 for each individual item in 1976 and how much we pay in 1979.

14 Q I don't think we --

15 A Well, let's say the cost of an album jacket.
16 Let's just say it was 16 cents at one time and it is 25
17 cents now.

18 Q I think you are getting a little ahead. What
19 records did they look at in order to obtain these figures?
20 What figures did they take off the record?

21 A Well, you see, we pressed records, for example,
22 that one presses, primarily, practically the entire life of our
23 company, so we can go back and know what we were paying them
24 for pressing and you can give them --

25 Q You are not answering my question. What -- my
question is what records did they look at to get these figures

1 come from and what they mean.

2 A The invoices on which we were billed.

3 Q Did they look at every invoice in the year 1976?

4 A We wouldn't have to, you see, because we would
5 have a price that would hold for a certain period of time
6 and you could pick a time in one year and then pick a time
7 three years later.

8 Q But there are a number of ways it could be done.
9 Do you know how it was in fact done? Exactly which records
10 they did look at and which numbers they took off and how they
11 arrived at these figures?

12 A They looked at the invoices that we received
13 from suppliers.

14 Q Do you know which invoices they looked at, how
15 they selected?

16 A Well, I can't tell you which specific invoices
17 they looked at, but I can tell you that one major company
18 supplies 95 per cent of our album jackets, and one company
19 supplies 95 per cent of our record pressing. So if you
20 look at the invoices, that we had from them, at the beginning
21 of 1976, then we know what we were paying for record pressing.
22 And we know what we were paying for jackets.

23 Q Mr. Mc Cracken, I am not asking you how it could
24 have been done, I am asking how it in fact was done, now
25 did you ask Mr. Wolf or did he tell you exactly which records

1 they -- which books or records you looked at and how he --
2 what figures he took off and how he arrived at these
3 figures?

4 A Yes, I did ask him that, and his answer is that
5 they picked a time in 1976 and knew what we paid for
6 record pressing during that time and what we paid for
7 records and what we paid for the other things. In place
8 of consumers base, we used four magazines, which are
9 indicative of a great deal of our space advertising in the
10 religious field, and we also use four magazines in the trade
11 area and at this point in time, in 1976, what we were paying
12 for a page of advertising space, what we were paying then,
13 and we know what we are paying today.

14 Q So -- I don't want to lead you -- exactly, can
15 you -- did you go down every one of these items, my question
16 first of all, was about album covers, artwork and separations.
17 Let me come back to it. You skipped around from one to
18 another, but let's start with the first one. You say he looked
19 at some invoices for 1976. Did he tell you that or are you
20 assuming it?

21 A Yes. No, he told me that.

22 Q Did you look at all of them?

23 A He looked at enough to know how many were -- that
24 were indicative of what we were paying in that period of time.
25 They don't change in every invoice, so --

1 Q They get billed a flat amount per album, is
2 that what you were saying?

3 A That is right.

4 Q The same for every album?

5 A That is right.

6 Q All the artwork is the same?

7 A No, the artwork cost will vary.

8 Q How about your separation cost?

9 A Separation cost will vary. Depends on how much
10 -- how many colors and how complicated it is. There, we
11 took a representative sample of album covers and we knew
12 exactly what we were paying for artwork and separation on
13 those and related that to the same type of album cover we had
14 been doing.

15 Q How many covers, how many sets of invoices were
16 there in the representative sample?

17 A I don't know that.

18 Q How was the representative sample chosen?

19 A By selecting a group of albums that would represent
20 the type of albums that we were doing at that time. And
21 comparing them to comparable albums.

22

23

24

25

1 Q Now, you don't know -- how many were chosen
2 for this sample? And you don't know who chose them, is
3 that right?

4 A Yes, I think so?

5 Q Who chose them?

6 A Mr. Wolf.

7 Q He himself chose them personally?

8 A Well, either he or it could have been one other
9 person that works directly under him.

10 Q How about album jackets, up 97 per cent.

11 A That is an easy one to compute, because we have
12 one price for all album jackets.

13 Q Uh-huh.

14 A That is all single LP album jackets are the same
15 and we have -- know how much we are paying and we figured
16 at the time of the price increase, it has been across the
17 board price increase.

18 Q Now, let me come to question I asked you before;
19 do you have -- you don't know for either of -- any of these
20 figures how much either of them is in either cents or in
21 gross amount at the present time?

22 A No, sir.

23 Q Not even approximately?

24 A Not -- it would not be advisable for me to guess
25 at that.

1 But I would be very happy to furnish the specific
2 information.

3 Q All right. I would like to have those figures.
4 I think for each of the items you have there, per album, when
5 could you supply them? You would probably supply them through
6 your counsel.

7 A When would you like to have them?

8 Q I would like to have them this afternoon.

9 A That seems to be a physical impossibility.

10 Q How soon could you make them available.

11 A About 10 days?

12 Q If that is what it takes. I should think you
13 must have those figures available. If they calculated a
14 percentage increase, they must be on a sheet of paper
15 available immediately.

16 A They probably are.

17 Q Could you send them as soon as you get back?

18 A Yes, I would be glad to, but I don't get back in the
19 office till Monday.

20 Q Okay.

21 A Just trying to be precise in what I say I will do.

22 MR. ZUCKERMAN: Madam Chairman, I would note that
23 we would join in Mr. Greenman's request for that, and I think
24 at an appropriate time that they should be produced is in
25 advance of Dr. Kiser's testimony, which would begin next
Tuesday.

1 I think Mr. Mc Cracken could certainly call his
2 office and have them mailed to Washington today.

3 MR. SHERMAN: May I just ask what this has to
4 with Dr. Kiser's testimony?

5 MR. ZUCKERMAN: I think it has a tremendous amount
6 to do with Dr. Kiser's testimony, because the validity
7 of the data that Dr. Kiser submitted can be tested in many
8 ways, and one of the ways it can be tested is the consistent
9 testimony of your other witnesses.

10 MR. SHERMAN: As I stated in the general principles,
11 it is hard to argue with those kind of broad generalities,
12 but it seems to me that these are figures for Word Records
13 about their specific cost increases in a specific period,
14 and somehow we are trying to use it as corroborative or
15 evidence inconsistent with the income study of an industry.

16 MR. GREENMAN: Let me say here, with all due
17 respect to you, Mr. Zuckerman, this is my cross examination.
18 I would like to carry on with it, but it seems to me that
19 counting down this list I have asked you for exactly 10
20 numbers and you could pick up the phone and you get back
21 to Waco on Monday and call Mr. Sherman and he could have --
22 or Tuesday morning or Monday afternoon. These are 10-cent
23 figures. If you have got a percentage here, there must be some
24 raw figures from which they come.

25 THE WITNESS: I will do my best to accomplish that.

1 BY MR. GREENMAN:

2 Q Well, I would hope if there is some difficulty,
3 we would have an explanation, Sherman can phone me with it
4 on Monday.

5 MR. SHERMAN: Mr. Greenman, he said he will do the
6 best he can.

7 MR. GREENMAN: Well, I have been waiting for
8 some other figures.

9 MR. SHERMAN: Yes, and we see what you do with them.

10 BY MR. GREENMAN:

11 Q I think you said most of your records are now
12 selling at \$7.98.

13 A Right.

14 Q And what is that in wholesale prices?

15 A Approximately \$3.75.

16 Q As of the first of this year, was that also true?

17 A As of the first of --

18 Q 1980.

19 A In --

20 Q In about January 1f 1979.

21 A Well, I am not sure about that. I would have to
22 double check. I am not sure exactly when the increased to
23 \$7.98. If our suggested list was \$7.98, that would -- our
24 wholesale price would have been the same.

25 Q What was your suggested list before you went to

1 \$7.98? On this same group of records?

2 A Well, I think it was \$6.99. I think we had
3 \$5.98, \$6.98, and \$7.98.

4 Q When was the price increase from \$5.98 to \$6.98?

5 A I can't tell you that. If you need the information
6 I perhaps can provide it at the time I provide the other --

7 Q All right. I appreciate that. And if there was
8 -- when you do this, you do it on all your records or all
9 your forthcoming releases at once?

10 A Yes. There will be a rare occasion when we
11 might increase in price in that individual album a little
12 higher, because of primarily packaging.

13 Q You said you made some cuts last year. I
14 unfortunately didn't take notes fast enough, but did I under-
15 stand that those occurred after the second quarter of last
16 year?

17 A They started in the second quarter.

18 Q In the second quarter. You said after the first
19 quarter?

20 A Well, I think I referred to the tremendous influx
21 of returns that we started experiencing in the second quarter.

22 Q And you said that you cut \$400,000 from your
23 advertising budget?

24 A Right.

25 Q You terminated a number of employees, how many

1 was that?

2 A 32.

3 Q Now, you now have 230, is that right, you had
4 260 before?

5 A Yes.

6 Q Incidentally, what part of the gross revenues
7 in your record business --

8 MR. SHERMAN: I object to the question.

9 MR. GREENMAN: On what basis?

10 MR. SHERMAN: On the basis that because a witness
11 speaks, appears in the proceeding, doesn't make all of the
12 financial statements of that company prone to examination,
13 but it certainly leaves it up to Mr. Mc Cracken, as to whether
14 he will respond, but I am making a formal objection.

15 MR. GREENMAN: The reason for my inquiry, Madam
16 Chairman, is we had the other testimony here about the
17 profitability, what would happen if there were increases,
18 we have had dollar figures, I am trying to put them in some
19 perspective. Most claims about profitability --

20 CHAIRMAN BURG: Mr. Sherman indicated he was making
21 the objection for the record, and it was up to the witness
22 to decide if he wished to answer your question.

23 BY MR. GREENMAN:

24 Q Go ahead.

25 A I'm trying. Are total sales

1 of records --

2 Q Of the record business, right.

3 A For when, for last year?

4 Q Yes, whatever the most convenient period is.

5 A It would be somewhere close to \$18

6 million. I would not try to get a misunderstanding by giving
7 exact figures.

8 Q I understand, so you -- if my arithmetic is right,
9 you sell about 5 million records a year?

10 A You are better with numbers than I am.

11 Q I don't know. All right, did you reduce, did
12 you make a cut in your advertising budget in 1978?

13 A No.

14 Q Did you reduce it?

15 A No, we had an increase.

16 Q Did you increase or decrease the number of
17 employees in '78?

18 A Increase.

19 Q How about in '77?

20 A Well, I can't be precise.

21 Q But the general direction.

22 A Generally, it was an upward trend.

23 Q In both, say, the advertising budget and your
24 number of employees? You have to say yes or no.

25 A Yes.

1 Q And is that also true of '76?

2 A I am afraid you are testing me too far there.

3 I just can't remember. I would guess that that probably
4 would be true, but I am not positive.

5 Q When your retail -- when your suggested list price
6 was \$6.98, what was your wholesale price?

7 A That, I don't know.

8 Q Did it bear about the same ratio --

9 A Yes, it would be simply 45 cents less.

10 Q 45.

11 A We are about 55 per cent off of retail.

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BY MR. GREENMAN:

Q. If I understand your testimony this morning, you said that your profit per record is less than the amount you pay in mechanicals. Did you say that?

A. I don't think so.

Q. Well, I understood you to say that if the mechanicals went up, you calculated, by 24 or 25 cents, and you're now paying, you say, 25 cents, that would wipe out your profit?

A. That's true.

Q. By which I infer that your profit is less than 25 cents per record?

A. Right now, I would say that's true.

Q. Now, Madam Chairman asked you this morning if you gave up the 3/4 cents, or if you were given back the 3/4 cents per song mechanical increase, which I calculate, on a record -- well, a record like that, we're talking about eight cents per record, tops. You would cut your whole -- your retail price by \$1 -- that would mean cutting your wholesale price by 45 cents.

Now, as I count it, that would leave you in a deficit position of 45 cents less, say, eight cents -- I come out at around 37 cents lost per record -- oh, I'm sorry, about 12 cents lost per record, at least, assuming you are now making something less than 25 cents.

1 A. Mm-hmm. That would --

2 Q. Now, there are jokes about selling in quantity,
3 but I would --

4 A. You can't make that up with volume.

5 Q. -- like to know how you plan to survive on a loss
6 per record.

7 A. My answer to that simply is that I think we're
8 in enough trouble right now in the record industry. I
9 think you know that the record industry was a very unprofit-
10 able industry in 1979, and that it is having plenty of
11 problems right now, as well, and what I mean to say is that
12 in the overall context -- when I said this this morning,
13 if that should happen -- a royalty rate reduction on mechani-
14 cals, I would couple that with a number of other savings
15 that I think we would have to try to do. And I think that a
16 combination of a cost saving in a number of areas would
17 have to come together for that to take place, and I think
18 it should happen.

19 And I was saying that I would do that, and would
20 make it happen. And I think that what we would see on the
21 other side of the fence is a tremendous increase in volume.

22 Q. I have difficulty -- I take that back. So you're
23 talking, in other words, not only about a reduction in
24 mechanical royalties, but other reductions as well.

25 A. Absolutely.

1 Q And that's a necessary condition.

2 A That's right -- that we would have to find enough
3 pennies in there to make it make sense, we would have to
4 have a total reduction in all these areas.

5 Q Of about how much?

6 A Well, you know, it would have to be enough to
7 overcome the 12 cents that you're talking about, plus getting
8 us into the black.

9 Q Well, I have got no further questions.

10 CHAIRMAN BURG: I'm sorry, what is your name
11 again?

12 MS. KILSON: Nancy Kilson.

13 CHAIRMAN BURG: Kilson?

14 MS. KILSON: Yes.

15 CHAIRMAN BURG: Thank you.

16 MS. KILSON: I represent the NMPA.

17 CROSS EXAMINATION

18 BY MS. KILSON:

19 Q You testified this morning that you have been a
20 member of the RIAA board for some time?

21 A (Indicated yes.)

22 Q Have you ever --

23 MR. ZUCKERMAN: Could you please speak, rather
24 than nod your head?

25 THE WITNESS: Yes, I have.

1 BY MS. KILSON:

2 Q Have you held any other position with the RIAA?

3 A Back before we had a full-time president -- Mr.
4 Gortikov, who is now reelected as president, by the mem-
5 bership, we now elect a chairman from the membership -- I was
6 a president of RIAA for two years.

7 Q And when was that?

8 A Honestly, I don't know. I think it was in, like,
9 the '67 -- '68 range, but I'm strictly going by memory. It
10 might have been later than that.

11 Q Could it possibly have been 1970 and '71?

12 A Yes.

13 Q You testified this morning that Word did not respond
14 to the Cambridge Research Survey because you had limited
15 resources, is that correct?

16 A Well, at the time that that information was being
17 sought, we had some tremendous demands internally, and some
18 computer work that we had to do, and a number of other
19 things, so that our financial group just was too occupied
20 with that, and couldn't get this information.

21 Q I see, and you testified this morning that you
22 have 230 employees in your company?

23 A Yes.

24 Q Could you tell me what was the gross income of
25 Word, Inc. in 1979?

1 MR. SHERMAN: I make the same objection as before,
2 but it's up to Mr. McCracken as to what he is willing to
3 answer.

4 THE WITNESS: It was about \$39 million -- between
5 \$39 and \$0 million.

6 BY MS. KILSON:

7 Q All right. I have an account that was published
8 in Cashbox magazine in January of this year, which des-
9 cribes a meeting at which you appeared, the first quarterly
10 meeting of your company in Dallas. And according to this
11 account, at that time, you stated that your company had
12 gross revenues in excess of \$42 million for 1979. Is that --

13 A That was an estimated figure, before we knew the
14 final results.

15 Q I see, but your record companies did have gross
16 revenues of \$18 million in 1979?

17 A That's an approximate figure, but it's not far off.

18 Q But you didn't have enough resources to respond
19 to a questionnaire that was sent by the RIAA?

20 A That's correct.

21 Q Are you aware of the testimony of Al Berman earlier
22 in this proceeding?

23 A I know that he testified, but I don't know very
24 much about what he said.

25 Q Have you heard that he testified that the Harry Fox

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1 Agency collects \$72 million worth of mechanical royalties,
2 or did in 1979?

3 A. No.

4 Q. Can I state that as a correct version of his
5 testimony?

6 Let's take the largest publishers. Do you know how
7 many of the largest music publishers you would have to add
8 together to get \$42 million in mechanical royalties?

9 A. No, I don't know, but I don't think you're com-
10 paring apples with apples, because you're talking about
11 straight bottom-line income, compared to a product that has
12 cost factors, marketing costs and advertising costs and
13 promotion costs.

14 Q. Leaving aside the relevance of the comparison for
15 a moment, I think Mr. Sherman represented this morning that
16 you are an expert on the recording industry. Is that
17 correct?

18 A. I don't know if I'm an expert on the recording
19 industry or not. I've been in the recording industry for
20 about 28 years.

21 Q. If I can cite you to page 25 of the report that was
22 issued by Mr. Nathan for the NMPA, he stated that the 30
23 largest music publishers combined received a total of \$42
24 million in mechanical royalties in 1979.

25 A. I would like to trade profits with him.

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1 Q Leaving that aside --

2 A And I'm curious as to why they don't reveal
3 theirs, as a group.

4 Q Perhaps they didn't have enough resources to do it,
5 either.

6 A Well, I know they make enough profit to --

7 Q Are you familiar with Light Records?

8 A Yes.

9 Q Is that one of your labels?

10 A It's one that, up until recently, was owned 50
11 percent by us and 50 percent by another party.

12 Q Could you tell me what its profit picture was
13 like in 1979?

14 A It lost somewhere -- I'm not sure, but it lost a
15 few hundred thousand dollars.

16 Q If I could refer for a moment to the same article
17 in Cashbox magazine -- and unfortunately I don't have
18 copies of this, but I will be happy to pass it around.

19 CHAIRMAN BURG: Keep your voice up, please.

20 MS. KILSON: Yes.

21 BY MS. KILSON:

22 Q At the same quarterly meeting in Dallas, in
23 January of this year, Light Records' president, Ralph
24 Carmichael, appeared, and he announced that 1979 sales were
25 up 30 percent. Has that figure also been revised?

1 A. Well, I don't know. The sales might have been up,
2 but the earnings were down. They lost money. You know, the
3 sales figure can be one thing, and whether or not you make a
4 profit can be quite the opposite. And I do know that they
5 lost money -- at least \$400,000, I think it was more.

6 Q. Okay. You testified earlier this morning that
7 most singer/songwriters start as performers, and that they
8 later become songwriters. Do you recall that?

9 A. That's true, in our field. Whether that's true
10 throughout the record industry, I obviously am not familiar
11 enough with the rest of the industry to say.

12 Q. Okay. Let's move to an area which you're perhaps
13 more familiar with. Do you know how much in mechanical
14 royalties your publishing companies together received in 1979?

15 A. No, I don't know that.

16 Q. Do you know how much they paid out to your writers
17 in that year?

18 A. No.

19 Q. Do you know how much they had left at the end of
20 the year, after paying out the writers' shares?

21 A. Who had left?

22 Q. Your publishing companies.

23 A. No, I really don't. I can't give you any -- I don't
24 have that information with me.

25 Q. Do you know what your record labels paid out in

1 mechanical royalties in 1979?

2 A. No, I don't.

3 Q. Well, if you don't have the numbers in your head,
4 maybe you could tell us which figure would be larger -- on
5 one hand, the number representing the amount of money that
6 your publishing companies had left in mechanical royalties,
7 at the end of the year, and on the other hand, the amount that
8 you paid out for your record companies?

9 A. On mechanical royalties?

10 Q. Right.

11 A. No, I don't know. I could not tell you that.

12 Q. Perhaps that's information that you could bring
13 from Waco as well?

14 A. I'm sure we probably could.

15 CHAIRMAN BURG: Is that a request?

16 MS. KILSON: That is a request.

17 THE WITNESS: The only thing -- I don't know how
18 complicated that is to come up with. If it is not compli-
19 cated, we can get it within a reasonable time.

20 BY MS. KILSON:

21 Q. Now, you have testified that there is a relation-
22 ship -- you said this morning that there is a relationship
23 between the amount of money that's earned by your publishing
24 company, as opposed to the amount that is earned by your
25 recording companies, and I think that this information is

1 necessary to support the statements you have made on the
2 record, and I don't think the complexity of it should be --

3 A. I'm not sure I understand what relationship there
4 is between the amount of money we paid out in royalties,
5 as compared to what was received by the publishing part of the
6 company.

7 Q. You indicated that your publishing companies were
8 several times more profitable --

9 A. Yes.

10 Q. -- than your record companies, and that could have
11 a bearing on that.

12 A. But the profitability of the record company has to
13 do with all of the costs --

14 Q. I'm sure it does. It's just a particular item
15 of information that I'm interested in.

16 A. Do you want to know the comparison of profitability
17 of the publishing company, compared to the record business?

18 Q. No, I asked for a comparison of the receipts
19 -- mechanical royalty receipts for 1979 of your publishing
20 companies, as compared with the mechanical royalty payments
21 of your record companies in that year.

22 A. Well, I would be glad to get that information.

23 Q. This may also have some bearing on your involve-
24 ment -- in your appearance today as a witness for the RIAA.

25 MR. SHERMAN: May we have an explanation of that?

1 MS. KILSON: Certainly.

2 MR. ZUCKERMAN: I think the explanation for that
3 is obvious. Mr. McCracken's record companies currently,
4 under the current rate, pay out more in mechanical royalties
5 to third parties than its publishing companies receive --
6 then obviously he has a clear financial -- personal finan-
7 cial stake in the outcome of the proceeding, as opposed
8 to whatever general statements he may be testifying about,
9 as his projections of what impact it would have on the indus-
10 try.

11 MR. SHERMAN: Mr. McCracken has already testified
12 -- and I don't know what percentage figure it was, but less
13 than 50 percent. I think he said 20 or 25 percent of the
14 recordings they release, are with Word Publishing Company.
15 Therefore, obviously, the record company payout would be more
16 than the publisher earns.

17 In any event, the publisher earnings are always
18 going to be divided in half, or worse, so that the record
19 company payout is always going to be larger.

20 MR. ZUCKERMAN: Well, I think if you're willing
21 to state on the record that the personal interests of
22 Word, Inc. in this proceeding, is much more significant on
23 the record company side than on the publisher's side, that
24 we can save Mr. McCracken the problem of going back and
25 getting the figures.

1 MR. SHERMAN: I'll let Mr. McCracken --

2 THE WITNESS: Well, I really don't know what I think
3 about that, because I'm not sure I fully understand what you
4 mean. But I can say that if you think that we have a
5 financial concern in the record company about what happens
6 in these proceedings, I would plead guilty to that. I'm
7 very concerned about what happens here.

8 We have a life and death stake involved in what
9 happens here, and that is the primary reason I'm here. I
10 am very concerned about what the future economic implications
11 are to our company, as well as the entire industry, on a rate
12 increase here.

13 MR. ZUCKERMAN: That wasn't the question, Mr.
14 McCracken. The question that was posed, or the information
15 that was sought, was to establish the relationship between
16 -- assuming that this Tribunal accepted the NMPA proposal,
17 and increased the mechanical royalty rate to 6 percent,
18 that would presumably increase the publishing income of the
19 publishing division of Word. It would also increase the
20 costs of the record division of Word, Inc.

21 And what we were doing is seeking a comparison, a
22 relationship between those two figures, which when compared
23 would give the personal stake of Word, Inc. in this proceed-
24 ing -- a comparison between how much your publishing income
25 of Word, Inc. would go up, compared with what the increased

1 costs of the Word, Inc. record company would increase.

2 THE WITNESS: If I may, I would like to refer back
3 to something I think I said this morning, and that is
4 that I really think the point is not relevant, simply because,
5 to us, because of the fact that it really wouldn't matter --
6 I know it would increase our publishing income. It would
7 have to.

8 But I'm saying that if it seriously impairs
9 the ability of our record company to do its job of selling
10 records and promoting records, and thereby causing the
11 benefits that would come to the publishing company, then
12 we would ultimately lose on it, even though you could put it
13 down on paper that we might gain by the increase, whatever
14 that might be. The fact of the matter really is that my
15 opinion and my statement here is very strongly that it would
16 impair the record company. If it impaired the record
17 company, whatever looks good on paper -- if you project
18 that out, based on today's sales figures, even -- I'm saying
19 today's sales figures won't be there tomorrow.

20 I'm saying that this kind of a rate increase will
21 make it impossible for the kind of promotion and marketing
22 activity to take place, that has been taking place. And
23 if you advance the theory that the record company is going
24 to continue to prosper and do well, that it's going to con-
25 tinue to be effective in marketing, then I'm sure we would

1 benefit in the publishing division. But if this activity
2 strikes virtually a death blow to the effectiveness of the
3 record company, then it doesn't matter how you compute
4 those other figures. They won't be there.

5 That's the concern, and I think that's the heart
6 of my concern about the whole matter.

7 MR. ZUCKERMAN: I don't want to pursue this dia-
8 logue longer, but if I remember correctly, Mr. Sherman
9 stated this morning that the interests -- and correct me if
10 I'm wrong, Mr. Sherman, that the interest of the Word
11 Publishing Company was balanced equally with the interest of
12 the Word Record Companies in this proceeding. If that's
13 an incorrect statement, then I --

14 MR. SHERMAN: That's an incorrect statement.

15 MR. ZUCKERMAN: Okay. What was the statement that
16 you did make?

17 MR. SHERMAN: I don't recall making any statement
18 about them being balanced. I asked Mr. McCracken, and I
19 said that, since he was both on the record side and the
20 publishing side, he stood to gain whichever way this proceed-
21 ing came out -- why is he testifying on the record company
22 side?

23 MR. ZUCKERMAN: Oh, but the point is that --
24 maybe I characterized it, using slightly different words,
25 but I thought that you were saying, in effect, that the

1 proceeding was a wash for him.

2 MR. SHERMAN: I didn't say that the proceeding was a
3 wash.

4 THE WITNESS: If I recall, I think he said that I
5 do have an interest in both, an involvement in both.

6 MR. ZUCKERMAN: That you stood to gain on each
7 side --

8 THE WITNESS: Whether or not --

9 MR. ZUCKERMAN: You stood to gain on the publishers'
10 side, and you stood to gain on the record side, and it's
11 just a matter whether you gained more on one side than you
12 lost on the other.

13 THE WITNESS: That has never been said, and has
14 not -- has never been my thinking at all. Nothing could
15 be farther from the truth. My thinking is that it -- what I
16 said a moment ago, that if we don't have a successful record
17 company, it doesn't matter how -- you could go to 10 cents
18 a song, and it wouldn't amount to anything, because there
19 wouldn't be any record companies around to promote records.

20 BY MS. KILSON:

21 Q. Mr. McCracken, what was your initial capital
22 investment in Word back in the beginning, in 1951?

23 A. My personal, initial capital investment in Word?

24 Q. What was the initial capital investment, whether
25 yours personally or --

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1 MR. SHERMAN: I'll make the same objection for
2 the record, and let Mr. McCracken respond as he wishes.

3 THE WITNESS: Well, I bought 100 of those game
4 of life records for \$71, and that's the total amount of money
5 that I had at that time.

6 BY MS. KILSON:

7 Q All right?

8 A And I have been borrowing money ever since, and
9 never been out of debt since.

10 Q You sold the company in 1974, didn't you?

11 A That's correct.

12 Q Could you tell us what you sold the company for?

13 A No, because it was an exchange of stock.

14 Q In order to refresh your recollection, I would
15 like to refer to an ABC annual report, and I have copies
16 for everyone.

end 8

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1
2 BY MS. KILSON:

3 Q If you will look at Page 32, Note B, the second
4 paragraph. Will you just read the first sentence of that
5 paragraph for the record aloud?

6 A "On November 22, 1974, the Company acquired Word,
7 Incorporated, which is engaged in the production of phonograph
8 records and tapes and the music publishing business for
9 302,478 shares of common stock in a transaction accounted for
10 on a pooling of interests basis."

11 Q Do you happen to recall what ABC common stock was
12 selling for?

13 A Yeah, 14.

14 Q Fourteen-and-three-quarters?

15 A Maybe.

16 Q Do you know what the mathematics on that works out
17 to?

18 A Something like three-and-a-half million, I think.
19 You've got a calculator there, haven't you.

20 Q 302,478.

21 MR. ZUCKERMAN: That's 302,478 shares times \$14.75
22 a share comes to \$4,461,000.

23 MS. KILSON: Thank you.

24 BY MS. KILSON:

25 Q Could you tell me how many songs typically would be
recorded on one album produced by one of your lables?

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A. Usually ten.

Q. Usually ten. And the pre-1978 statutory mechanical royalty rate, the total royalty payable for a record with ten songs on it would have been 20 cents; is that right?

A. Yes, if you would have ten copyrighted songs.

Q. And at the post-'78 rate of 2 3/4 cents, a record with ten songs on it would have cost you a total of 27 1/2 cents in royalties; is that right?

A. Correct.

Q. So what was the total cent increase in royalties as a result of the latest increase in the mechanical royalty rate?

A. You mean for us?

Q. For Word.

A. For Word?

Q. Right.

A. On our records --

Q. On one record containing ten songs.

A. If all were copyrighted, you mean?

Q. Assuming all are copyrighted.

A. It would be 7 1/2 cents.

Q. A maximum of 7 1/2 cents. I wonder if you could tell me -- first of all, you testified this morning that as a result of the increase in the statutory rate from two cents to 2 3/4 cents, you had to increase the retail list price of your records by a dollar; is that right?

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A. Yes.

Q. Do you know how much the wholesale price increased at that time?

A. Forty-five cents essentially.

Q. Can you explain how a 7.5 cent increase in the royalty payable on a record results in a dollar increase at the retail price level?

A. Well, first of all, for us it was an 11-cent increase because I think I mentioned we were averaging 14 cents based on the fact that we had a certain number of public domain songs that we were using and this accelerated the singer-songwriter relationship so that we ended up with more copyrighted songs per record. So for us, it was an effective increase of 11 cents.

Q. That wasn't as a result of any increase in the rate. That was just a change in the material you chose to record.

A. Well, that's not quite an accurate statement for us because it was not -- we don't always have a choice of what we record. As the singer-songwriter development has occurred, there is an increasing amount of leverage that they have to determine what you record.

Q. Go on.

A. So they have insisted on their copyrights being on our records.

Q. In addition to that factor, what other factors resulted in the dollar increase?

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A. Well, the other factors were simply the other increases that were occurring which I have also shown you before on this bar graph.

Q. These are other increases in the cost of other components of producing records?

A. Other costs of doing business. But this was sort of -- I guess you could say -- the straw that broke the camel's back.

Q. But it's not fair, is it, to say that the 7.5 cent increase in the statutory rate caused a dollar increase --

A. Well, it ~~dipped~~ it over. I would say that if the statutory rate increase did not occur we could have held the line and would have worked very hard at not going to the increase because it's no fun to increase prices.

Q. But that one-dollar increase at retail was not a direct result solely of the increase in statutory rate?

A. Well, it was the decisive factor.

Q. All right. Referring for a moment to RIAA Exhibit "R", your chart, can you tell us whether this chart reflects anywhere the impact of the cost-cutting measures that you told me that you had instituted in 1979?

A. Well, yes. We started -- it obviously doesn't reflect the total amount of decrease in advertising and it doesn't reflect the determination of 32 employees. So, in terms of -- it doesn't deal in total numbers, you know. It wouldn't reflect the decrease in total advertising. We're only talking about

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what our costs per page of advertising was in '76 compared to '79. We're not talking about the fact that we cut back on advertising totally. And it doesn't have anything in there for personnel.

Q. All right. You testified that you didn't see the CBS chart before you prepared this chart; is that correct?

A. That's correct.

Q. How did you happen to choose this particular format for your chart, RIAA Exhibit R?

A. Those are the components that affect our business. Those are things we spend money on every day.

Q. I would like to call your attention to the fact that you have chosen almost exactly the same format that was used by CBS in its chart.

A. Well, it would only be natural. We're in the same business; we have the same problems.

Q. You are telling me that that's a mere coincidence?

A. As far as I'm concerned, it is. Whether anyone else in our company saw that, I don't know. I'm only saying that I saw it yesterday for the first time.

Q. Thank you. You testified this morning that many of our outside licenses -- which is to say licenses not involving copyrights that you own are obtained from the Harry Fox Agency at the statutory rate.

A. Correct.

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Q. That's right? I would like to call your attention to some licenses which were issued to your company by the Harry Fox Agency.

Would you read for the record from the first page the name of the company to which this license was issued, the statutory rate and the date of the release?

MR. SHERMAN: Before Mr. McCracken answers these questions I'm wondering if we could have from counsel an explanation of how these licenses were chosen from the Fox Agency records.

MR. ZUCKERMAN: I don't see the relevance of that explanation. The question posed to Mr. McCracken is whether these were licenses issued by the Fox Agency to Word, Incorporated.

MR. SHERMAN: But the fact is that you are choosing a specific group of licenses here out of I don't know how many that were issued to Word. Certainly Mr. Greenman must agree with me, I'm sure, because he wants to know the selection process for everything as well. So I think it would be helpful just to know how many these are out of the total licensed to Word by Fox and so on and so forth. What was the criterion used in selecting these particular licenses?

THE WITNESS: I think I can make a comment on this. First of all, this is one group and I believe it's all for the same album, I'm pretty sure. And what this is is a negotiated

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1 arrangement for a specific album of variety of music that was
2 done as a promotional album. It is not a regular Word release.
3

4 You can see that the artists vary through here:
5 I can't say all these are because I see we have one Johnny Cash
6 which came from CBS obviously -- but in this case it was because
7 this was a low-priced promotional record and it was sold -- I
8 can't tell you the price but I know it was sold well below the
9 normal list price.

10 If I'm not mistaken, it was probably a \$2.98,
11 possibly a \$3.98 record.

12 MS. KILSON: Thank you. I'm not making any represen-
13 tation as to what percentage of the total universe of licenses
14 that are issued to your company this involves.

15 I would simply like you to read into the record some
16 information that's represented on those licenses.

17 THE WITNESS: Well, the other thing I feel is impor-
18 tant to say --

19 MS. KILSON: There's no question pending that requires
20 an opinion. I just asked you to read into the record some infor-
21 mation contained on the face of these licenses. Can you do that?

22 MR. SHERMAN: I think he can read it into the record
23 and then say whatever it is that he felt was important to say.

24 THE WITNESS: What do you want me to read?

25 MS. KILSON: The company to which the license is
issued, the rate which is written on the face of the license, and

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the date of the release. And you can omit the Johnny Cash CBS license.

THE WITNESS: Well, it's the Word, Incorporated dated May 8, 1980 and the royalty rate is .0230.

BY MS. KILSON:

Q. That's 2.3 cents?

A. Yes.

Q. The next one is also to Word, Incorporated?

A. The same.

Q. That's a royalty rate of 2.3 cents?

A. Yes.

Q. And the record which this covers was released in 1980?

A. The date of this agreement is May 8, 1980.

Q. And the date of release is 1980?

A. Yes.

Q. The next one was issued to Word, Incorporated?

A. Yes.

Q. What is the royalty rate?

A. Well, I can't read what it says here. Something of statutory.

Q. This copy may be a little more clear than yours. Can you read that?

A. "Fifty percent of statutory."

Q. What is the date of this license?

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A. I can't read that either.

COMMISSIONER JAMES: It's not showing on my copy
either, counsel.

MS. KILSON: Can you read this?

THE WITNESS: February 12, 1979.

MS. KILSON: I'm sorry. These have been reproduced a
couple of times and the quality suffers as a result.

CHAIRMAN BURG: Which page are you looking at now?

THE WITNESS: The third page.

CHAIRMAN BURG: I see February 23rd down here. Where is
the 12th?

MR. ZUCKEMAN: Madam Chairman, there is typed at the
top, I believe, February 12, 1979 and then there is stamped
"keypunch" which was a later operation, February 23, 1979.

BY MS. KILSON:

Q. The next one was issued to Word, Incorporated?

A. That's right, April 10, 1979 and the rate is two cents.

Q. Thank you. The next license --

COMMISSIONER JAMES: Counsel, can you stop there? The
date of the release, is that 1978?

MS. KILSON: Yes. And the date of the license is
March 26, 1979.

BY MS. KILSON:

Q. The next license covers the tune "The Shadow of the
Cross, The Shadow of the Cross." That was issued to Word,

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Incorporated?

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A. Yes.

4

Q. What is the royalty rate?

5

A. It looks like .0150. Is that correct?

6

Q. That's right. The license date?

7

A. 1978. Oh. March 26, 1979.

8

Q. And release year?

9

A. 1978.

10

Q. Thank you. The next license pertaining to the 104th

11

Psalm was issued to Word, Incorporated?

12

A. April 2, 1980.

13

Q. Am I correct that it was issued to your company?

14

A. Yes, Word, Incorporated. That's what it says.

15

Q. And the rate?

16

A. Two cents.

17

Q. The license date?

18

A. Well, I can't -- is that March 1980?

19

Q. That's right. Date of release?

20

A. Is 1978.

21

Q. The next license for "Why --

22

COMMISSIONER JAMES: Excuse me. I'm really getting
confused now. Just out of curiosity, the record ^{is} released in
1978 and two years later there's a license granted?

24

THE WITNESS: Apparently. I don't know what that means.

25

COMMISSIONER JAMES: It seems like a long delay. I

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1 was just wondering if this was an unusual situation that this --
2 I think we had received testimony that generally the records
3 are released and then they apply for the license afterwards but
4 the thing you receive from the Fox company, it's usually two or
5 three months. That's the first one I've seen that was two years
6 later.

7
8 THE WITNESS: I think what this is, these are tracks
9 that were taken from existing albums and put onto a sampler type
10 of album. And later a request was made for a reduction in the
11 rate. And they gave us the reduction in the rate; otherwise we
12 would have been paying the same rate.

13 COMMISSIONER JAMES: This is like an amendment?

14 THE WITNESS: That's right. There was an original
15 agreement for this on another album. See, what these are, these
16 are tracks. It's not unlike the album I showed you this morning
17 where we put an extra record in as a bonus which, in effect,
18 would be at either no increase in price or one or two dollars
19 increase in price. And so we come back and make the request.
20 Since the price of the record is less than half of what the
21 normal retail price would be, we ask for a rate reduction.

22 The rate reductions were not proportionate to the
23 reduction in the price of the record.

24 BY MS. KILSON:

25 Q. In other words, Mr. McCracken, the publishers were
willing to give you a discount for these licenses even though

9-12

1 the records had already been released?

2
3 A. They did but the original permission to use the song
4 was for a previously released album. This was a case where
5 tracks were taken from a previously released album and put into
6 a sampler that was either sold at a price of something like
7 \$2.98 or was included as an extra give-away or bonus album in
8 with another album similar to the one I showed you this morning.

9 Q. Are you saying that you were infringing the copyrights
10 on these songs until you got the license from the Harry Fox
11 Agency?

12 A. No. We already had a license. And if they didn't do
13 this, if they did not give us this agreement, we would have paid
14 the statutory rate.

15 Q. Don't you have to obtain a new license every time
16 you issue a recording, a new work?

17 A. No. I don't know for sure about that. All I know is
18 that we did have a license to use the song and we got this
19 amendment to the agreement in order to pay a smaller royalty
20 rate.

21 Q. These licenses were issued to your company?

22 A. Yes.

23 Q. And they are at less than statutory rate?

24 A. Yes.

25 MS. KILSON: Thank you very much. I have no further
questions.

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2 CHAIRMAN BURG: Excuse me. I have a question,
3 counsellor. On the last two pages, I can't read it all but the
4 last line it says "Voids and supercedes license," the number and
5 then it starts fading out. What is the language of that last
6 line?

7 MS. KILSON: "Voids and supercedes license no. 7366-
8 198 dated December 30, 1977 to correct royalty rate."

9 COMMISSIONER JAMES: That's the question I was going
10 to ask you.

11 CHAIRMAN BURG: What does that mean?

12 THE WITNESS: That means that they agreed to amend the
13 royalty rate, for us to use what we had previously been licensed
14 to use at a lower rate.

15 MS. KILSON: That language does not appear in any of
16 the other licenses.

17 CHAIRMAN BURG: Just the last two; is that right?

18 MS. KILSON: That's right.

19 THE WITNESS: Well, that's essentially the way that he
20 chooses to do this sort of thing. We have done it numerous
21 times with him.

22 MS. KILSON: Thank you.

23 THE WITNESS: But I would like to say that there are
24 eight --

25 MR. ZUCKERMAN: Madam Chairman, there are no questions
pending. This is a matter for redirect.

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MR. SHERMAN: Mr. Zuckerman, are you so afraid of what he has to say?

CHAIRMAN BURG: I think earlier it was decided that he would read this and then he would have a comment. That was the agreement as I recall it.

THE WITNESS: And the thing that I want to say is that if you are going to introduce these into testimony, then I would like to go through all of our Harry Fox agreements and submit them in the total mechanical royalty rate that we're paying on all of them because you pick eight or nine or whatever number there are here and there are several hundred, maybe more than 1000, I really don't know, but this is not a representative sampling of the rate that we pay to Harry Fox.

MS. KILSON: I don't think any claim was made that they were representative.

THE WITNESS: Well, it was maybe implied.

MR. ZUCKERMAN: Madam Chairman, I would note in response to Mr. McCracken's comment that we did not state that these were representative and did not imply these were representative but Mr. McCracken did testify on his direct testimony that the transcript will show that the rate that he gets for licenses through the Harry Fox Agency is the statutory rate, period. No modification, no reference to the fact that he does obtain negotiated licenses from publishers.

THE WITNESS: It's only -- other than other religious

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publishers, this is the only time that I know of of getting any kind of a consideration on a request for negotiated rate. And when we have approached other publishers directly, we have been denied.

MS. KILSON: No further questions.

CHAIRMAN BURG: Thank you very much.

COMMISSIONER JAMES: Hold it. Mr. Sherman, did you give him my shopping list?

MR. SHERMAN: Yes.

COMMISSIONER JAMES: Is your counsel here to answer?

MR. SHERMAN: I think he is going to handle it himself.

COMMISSIONER JAMES: Okay.

THE WITNESS: We have gotten answers to just about all the things that you requested. And what I would like to know is: Can those be given to the Tribunal in confidence? There is information here that I am not interested in being made public. It has obvious value to competitors and others in the industry. So we have worked up the answers to your shopping list.

COMMISSIONER JAMES: That is at least a very good start. We have not reached a decision. I think your brief addresses it today, whether or not a request still could be made to go into a closed session.

MR. GREENMAN: I was going to say, Mr. Commissioner,

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that as I read the regulations, there is no minimum time required for such a request, for a request to have a closed session as opposed to one to open a session and I state right now that we have no objection to these figures being delivered as part of such a closed session. It need only be a three-minute session, I suppose.

COMMISSIONER JAMES: I would make this suggestion because that issue has really not been resolved and I understand that there are tremendous confidentiality problems. If you could leave it with your lawyer and when that issue is decided as to how we are going to treat it, we will give it due consideration at that time. As a current pending matter, it has not been resolved. But I am pleased that you have the information, at least, so if we ever resolve it we can get on with it.

THE WITNESS: Well, we spent a few hours accumulating the information and I will leave it with our attorney.

COMMISSIONER JAMES: As the one who requested it, I appreciate your efforts.

CHAIRMAN BURG: Proceed, Mr. Sherman.

REDIRECT EXAMINATION

BY MR. SHERMAN:

Q. Mr. McCracken, let's focus back on these licenses for a moment. I see that the first two bear a date of -- it's hard to tell but it's sometime in April of 1980;; is that correct?

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A. Yes.

Q. And the next one is February of '79; is that correct?

A. Right.

Q. The fourth is March of '79 and so is the fifth.

CHAIRMAN BURG: I'm sorry, Mr. Sherman, I missed the first part of that. What are you referring to?

MR. SHERMAN: I'm simply asking Mr. McCracken to look at these licenses again to see the variety of time periods during which they were issued. It almost seems as though they were selected with some very specific purpose in mind instead of randomly taking them in order or anything else to give any representation as to the rate that you are paying to the Harry Fox Agency.

MR. ZUCKERMAN: Mr. Sherman, we have stated several times that they were not selected to be representative licenses, that they were selected to show that negotiation does occur contrary to what Mr. McCracken testified.

end take 9
JW

1 Q Mr. Mc Cracken, did you testify that you believe
2 that these licenses were issued for a sampler album?

3 A Yes.

4 Q Would you please describe again what a "sampler
5 album" is?

6 A Yes, a sampler album is when different tracks
7 from different existing albums that have been out for a
8 period of time are brought together into one album for the
9 purpose of exposing people to some of their artists. We
10 have done this occasionally for the purpose of simply
11 stimulating the interest in a certain group of artists or
12 a certain type of music. And we would take 10 or 12 tracks
13 from a variety of albums, put them onto one, and market
14 them in that manner, and the purpose of it is has nothing
15 to do with making a profit; it is really a promotional
16 vehicle, and that is the reason we have asked for reduced
17 mechanical royalty rates, because it is helping, it is
18 obviously helping the publisher as much as it is helping
19 us; because we are promoting songs, we are promoting artists,
20 and this has been a regular part of our promotional approach
21 in trying to expose artists and songs to the public. And
22 this is the only kind of thing that we have ever gotten
23 any kind of a special rate on. I think it is important
24 to understand that these are not regular line records;
25 they are not being sold at the normal price; they are not
being sold at the normal discount; therefore, it was in the

1 publisher's interest as much as our interest to make an
2 exception about the mechanical rate in this case. This is
3 not in any way to say that such things have happened on
4 normal product. Because to my knowledge it has not happened.
5 It certainly has not happened in our experience.

6 I want to make that clear because these are
7 definitely promotional albums and they are not regular
8 product, our normal line of product. They are not price
9 recording.

10 Q Do you pay artists for these?

11 A We pay a very greatly reduced artist's royalty
12 for these albums.

13 Q And are you familiar with the testimony that
14 there has been in this proceeding to datethat budgetwise,
15 albums are usually sold, it is industry practice to license
16 budget line albums at a reduced statutory rate?

17 A So far as I know, if that happens, I don't see
18 how you could possibly sell budget line records without
19 some sort of a reduced rate. The economics of it just
20 couldn't work.

21 Q This would be the most budget of budget line
22 albums, the promotional sampler.

23 A This would probably be less than most budget
24 records, would be.

25 Q And you got a reduction of

lj 10-41

1 2-3/4 cents to 2.3 cents.

2 A That is not as much of a reduction as you need
3 by any means. I think there is one a little bit lower,
4 but this is surprising to me that it is not lower than
5 that.

6 Q You were asked to read from the ABC annual
7 report for 1974; and I ask you to turn back to that once
8 again, please, page 32. And I believe the calculation
9 that was made was to show that Word, Inc. was sold to
10 ABC, not Word Records, is that right?

11 A Yes.

12 Q So that the sale included not just the record
13 company, but the 6 publishing companies that you mentioned
14 earlier?

15 A That is right. It included everything, the book
16 publishing, educational products, music publishing.
17 Everything we are, the whole company.

18 Q So you couldn't attribute the \$4,000,000 to the
19 record company alone?

20 A No.

21 Q Now, I guess it was suggested that \$4,000,000 was
22 a lot of money. I was wondering if you would read on the
23 first paragraph of the acquisitions, beginning with the
24 third line, where it says, "On July 31, 1974."

25 A Okay. "The company acquired the net assets of the
Historic Smithville Inn, Incorporated. It is a complex

1 known as the Historic Town of Smithville, and on July 31,
2 1974, the assets of Claimant's music corporation, which
3 is engaged in the phonograph record business. These busi-
4 nesses were acquired for \$26,136,000 in cash, notes payable,
5 other amounts payable."

6 Q Keep reading.

7 A "The excess of cost over the fair value of net
8 tangible assets acquired was assigned as follows:
9 Copyrights, contracts and other intangibles, \$10,953,000,
10 being amortized over 1/20 years and goodwill. \$4,500,000
11 being amortized over 40 years."

12 Q So for \$26,000,000 in cash, notes payable and other
13 amounts payable, and I am not sure whether the notes payable
14 and other amounts payable are in addition to the \$26,000,000
15 or whether the \$26,000,000 is the total, ABC acquired two
16 special interest consumer magazines, Historic Smithville
17 Inns, and Famous Music Corporation, a rather prominent music
18 publisher.

19 A That is correct.

20 Q And we don't know how much is attributable to each
21 of those but we do know that nearly \$11,000,000 was assigned
22 just to the copyrights, contracts and other intangibles.
23 And those were amortized over a 1-20 year period.

24 A Yes.

25 Q Sounds like Famous Music did a lot better than

1 Word Music Record and Music and the other publishing companies
2 did, at that time.

3 A Yes, they have been a very strong music publishing
4 company in the popular music field.

5 Q Sounds like their copyrights are very, very
6 valuable.

7 A Yes, they were.

8 MR. SHERMAN: Madam Chairman, I object to that
9 kind of argument, especially when we are talking -- when the
10 record here shows that there are at least 4 businesses being
11 acquired and that figure of \$11,000,000 is attributable to
12 the three different types of property, the copyrights,
13 contracts, and other intangibles, which would include all
14 kinds of other little kinds of goodwill.

15 I also object to the practice of arguing in
16 guise of the question.

17 CHAIRMAN BURG: I think you have made your point.

18 MR. GREENMAN: Madam Chairman, I would like to note
19 I think the correction on the record, which is true on the
20 face of the ABC annual report, "the assets of Famous Music
21 Corporation, which is engaged in the phonograph record
22 business," Famous Music Corporation, to my information,
23 rather the assets of the Famous Music Corporation, acquired
24 by ABC, are not in music publishing. They are in recording.

25 I disagree with that. They are a
very strong music publishing and that is the primary interest

1 that ABC had in acquiring them. Famous Music has been a
2 major factor in music publishing for many years. Anyone
3 in the record industry would -- could recognize that.

4 MR. ZUCKERMAN: That is a matter of public record,
5 Madam Chairman, we will submit documents that will show
6 that the publishing of Famous Music is still part of the
7 Gulf and Western Company and it is only the record company
8 of Famous Music that was sold to ABC.

9 MR. SHERMAN: And what were the copyrights for?

10 CHAIRMAN BURG: Readable, the copyrights --

11 MR. ZUCKERMAN: The copyrights can refer to not
12 only to the C in the circle but also to the P in the circle
13 which is the copyright of the record which was part of the
14 acquisition.

15 MR. SHERMAN: In 1974, and -- the circle first
16 came in in February of 1972. So that means that you have
17 very valuable "T" in a circle copyrights in the last two
18 years, if that is what it refers to.

19 MR. ZUCKERMAN: I don't think there is any point
20 in --

21 MR. SHERMAN: I don't think we can establish it
22 one way or another.

23 MR. ZUCKERMAN: We can establish it. We will try
24 to obtain the documents and will submit them to --

25 MR. SHERMAN: I was just going to point out,

1 Madam Chairman, that there were two publishing entities in
2 here, not music publishing, Word publishing, is two
3 magazines, which, of course, have copyrights; Lord knows
4 how valuable they may be.

5 MR. JAMES: Just for the record, is this an
6 exhibit? Was this submitted as an exhibit?

7 MR. ZUCKERMAN: Yes, it was, Commissioner James.

8 MR. JAMES: Okay.

9 MR. ZUCKERMAN: We are in the process of going
10 through --

11 MR. JAMES: Well, I didn't state that it was.
12 I mean, questions were asked by your co-counsel. I didn't
13 mean it for the record --

14 MR. ZUCKERMAN: We intended that both the
15 annual report of ABC and also the set of Harry Fox licenses
16 that were handed to the witness, Counsel of the Tribunal,
17 would be admitted into the Exhibit with the
18 permission of the Chair.

19 BY MR. GREENMAN:

20 Q I think, Mr. Mc Cracken, you testified that 15
21 per cent of the songs are controlled by publishers other
22 than Word publishing company.

23 A Yes, sir.

24 Q How often do those other publishers come to
25 visit you to promote their records?

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A Never.

Q I have nothing further.

CHAIRMAN BURG: Thank you, Mr. Mc Cracken. We
will take a brief break.

(Recess.)

bd-11-1

1 Whereupon,

2 GENE NORMAN

3 having been first duly sworn, was called as a witness and
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SHERMAN:

7 Q Would you please state your name and address for
8 the record?

9 A Yes, my name is Gene Norman, and my business
10 address is 8400 Sunset Boulevard, Los Angeles, California.

11 Q What is your profession, please?

12 A I am an impresario.

13 Q And could you tell us what an impresario is?

14 A Yes, an impresario is a man who presents talent,
15 who works with musicians, essentially. And, of course, I
16 am a record manufacturer.

17 Q What is your record company?

18 A It's called GNP Crescendo Records.

19 Q And how many employees does GNP Crescendo Records
20 have?

21 A We only have five people, and three representatives
22 in the field. But since we deal with -- mainly with indepen-
23 dent contractors and independent distributors and so on,
24 we operate as a full-line record company.

25 Q Do you also own a publishing company?

bd-11-2

1 A. Yes, we have two publishing firms, Neil Music
2 and Skybla (ph.) Music, one BMI and one ASCAP.

3 Q. Could you please tell the Tribunal how you got into
4 the record business?

5 A. Well, I was originally a radio disk jockey,
6 playing essentially jazz, in Los Angeles, and I decided to put
7 on some jazz concerts, and the jazz concerts started in Pasa-
8 dena in 1947, and led to records of the concerts that I
9 recorded for my own collection, and I presented them to
10 various people -- and a small company asked me if I would
11 like to release some of the records, those jazz albums, and
12 that's how it started.

13 And so the major companies sold my jazz records,
14 and I started to produce albums for the major companies,
15 and then I finally decided that I had more flexibility to
16 start my own label.

17 Q. Did you, at any point, get into nightclubs?

18 A. Yes, in 1954, the concerts were starting to be
19 presented, West Coast-wise, all the way from San Diego to
20 Vancouver, British Columbia, and the man that was going
21 out with the tours while I was on the radio, or on TV at that
22 time, had been in the nightclub business, and the club had
23 opened up -- had failed, as a matter of fact, on the Sunset
24 Strip, and he said, would you like to go into the night-
25 club business? And I said, sure, if you'll run the inside,

bd-11-3

1 then I'll run the talent.

2 Q And what was the name of the nightclub business?

3 A The Crescendo and the Interlude.

4 Q And what kind of acts did you book?

5 A Well, we started with music -- big bands, mostly,
6 Count Basie, Duke Ellington, and Stan Kenton, and we wanted,
7 often, to move on -- Lenny Bruce started with me, Mort
8 Sahl, Shelley Berman, Jonathan Winters -- everyone of that era
9 played at those two clubs.

10 Q And how did you happen to move into Crescendo
11 Records?

12 A At the same time, in exactly the same year that
13 I decided to start my own record company, so that I could
14 have greater freedom to record what I wanted to record,
15 because I found that the major labels and their sales
16 departments would veto some of the projects that I wanted to
17 do.

18 In fact, I gave Decca an album of Dixieland jazz,
19 and they didn't listen for five years. That's when I knew
20 I had to start my own record company.

21 Q And when did you start Crescendo Records?

22 A The same year, 1954.

23 Q And at what point did you leave the nightclub and
24 move entirely into the record business?

25 A We sold the nightclubs in 1963, and then I devoted

1 myself entirely to the record business.

2 Q. Could you tell us more about Crescendo Records?
3 What kind of albums do you release?

4 A. Well, it started as a jazz label, but I started
5 to indulge my own tastes -- all kinds of specialty music,
6 blues -- anything that I personally liked or considered worth
7 recording. In the words of Felix Mendelson, no concern for
8 what the public pays for or praises, but only what I myself
9 consider good.

10 Q. Did you bring with you a catalogue of --

11 A. Yes, I have a catalogue of my label.

12 CHAIRMAN BURG: Mr. Norman, if you will, slow
13 down the pace of your testimony, so that the reporter can get
14 it accurately.

15 THE WITNESS: Oh, I'm sorry.

16 MR. SHERMAN: Madam Chairman, we would like to
17 introduce these catalogues as RIAA Exhibit S.

18 (RIAA Exhibit S was marked for identification.)

19 BY MR. SHERMAN:

20 Q. And did you also bring with you some albums --

21 A. Yes.

22 Q. -- that you can show to the Tribunal, to illustrate
23 the range of products Crescendo Records issues?

24 A. Yes.

25 MR. ZUCKERMAN: I will stipulate that this is not

1 an economic study.

2 (Laughter.)

3 MR. SHERMAN: We've found another thing that we can
4 agree upon.

5 THE WITNESS: You'll notice in my catalogue that
6 there is everything from Cajun groups from Louisiana, to
7 a cowboy yodeler from Idaho, to old-time music groups from
8 Spokane, Washington, to calypso, to Cuban music, to the
9 blues. I have an organist I've just signed who's from Mil-
10 waukee, Wisconsin, who makes polkas, and it's just a broad
11 range of everything. It's really a microcosm of music.
12 We've just tried to stay out of the --

13 BY MR. SHERMAN:

14 Q Could you show the Tribunal some of the albums
15 that you've brought?

16 A Yeah. Here's a recent album by an artist named
17 Anita O'Day. Perhaps you saw her on 60 Minutes.

18 CHAIRMAN BURG: Yes, I did.

19 THE WITNESS: She's a marvelous performer, and
20 the mainstream record companies would not touch her, because
21 she's -- you know, she's a senior citizen now, but she made
22 a marvelous album, and personally I know her to be very
23 successful in Japan, because they are great fans of hers.

24 This is an album dedicated to one of the great
25 jazz musicians of all time, Lester Young, who was with Count

1 Basie for years. He was the Charlie Parker of the tenor
2 saxophone, and Billie Holiday called him Prez. He was
3 President of the Tenor Saxophone Division. So we called this
4 group Prez Conference, and what we did was transcribe all of
5 his solos, and had four saxophones play them in unison.

6 This is a very great artist from Louisiana, called
7 Clifton Chenier. He's a Cajun who sings in French, and he's
8 a great hero in France. Unfortunately, he's very old now,
9 and I'm afraid he isn't going to live too much longer, but
10 he is a glorious artist, that the major labels, I'm sure,
11 would not be interested in.

12 This is our Prez Conference group, adding Joe
13 Williams singing all the songs on which Lester played choruses,
14 sung by Billie Holiday and Jimmy Rushing. Joe Williams
15 played with Count Basie. He's another artist that deserves
16 to be recorded, that the majors wouldn't record.

17 This is my old-time music group. They were
18 originally with MCA in Canada, but MCA-US didn't want them,
19 because they didn't see the potential of them, and they
20 wanted to be in rock. This has been a more successful
21 group, I might add, even though it's far afield from what I
22 normally do. The woman in the group is 75 years old, and
23 they still tour, and they play old-time music, and they
24 play all standard songs.

25 I once submitted a new song to them, and they said,

1 no, we're not interested in this -- we already know 400
2 songs. So they do all the old songs. They're really a mar-
3 velous group. They're from Spokane. They're currently on
4 tour in Canada.

5 Here is old-time music, honky-tonk piano, by
6 Mickey Finn's place in Las Vegas, entitled -- Mickey Finn and
7 Dick Tyner, who are both piano players, and you'll notice that
8 this is a two-record set, which means there are two records
9 in there -- 22 songs, and this also is 22 songs in one album
10 for the price of \$7.98.

11 Q You're referring to "The Very Best of the Moms
12 and Dads"?

13 A "The Very Best of the Moms and Dads Honky-Tonk
14 Piano." My son is a science fiction -- Trekkie, and he's
15 an artist on the label, and we're doing the greatest science
16 fiction hits with him, and he appears in all the science
17 fiction dimensions. And here again we do 18 songs on the
18 album, so the kids get good value.

19 And that's just some of the 250 albums that I have
20 in the catalogue.

21 Q How many albums do you release a year?

22 A Well, anywhere between 12 and 20, depending on how
23 much money we have.

24 Q And what do you think you might be releasing this
25 year?

bd-11-8

1 A. Well, this year it's very tough. We have only got
2 seven so far, because '79 was such a bad year, and we didn't
3 have any money to make records the first half of this year.

4 Q. Let's talk about your publishing companies. Why
5 did you go into the publishing business?

6 A. Well, when I opened my first nightclub in 1949,
7 on Barnes Street, we opened the place, incidentally,
8 because the Woody Herman Band had no place to work out -- so I
9 was prevailed upon as an impresario to open a nightclub for
10 Woody.

11 And his manager was a very great man named Mike
12 Valen (ph.) -- took me aside, and I was very young then -- I
13 guess I was 27 years old, or something like that, and said,
14 Gene, if you're going to be in the music business, you must
15 be a publisher, because the best part of our business is to
16 own the music.

17 And so I said, well, if that's what you advise --
18 absolutely, why don't you open a publishing firm, which I
19 did. It was the best advice I had in the beginning.

20 Q. On the copyrights that you own, do you retain 50
21 percent of the royalties?

22 A. Yes, of the ones we own outright, the publisher
23 and the writer share 50 percent each.

24 Q. And do you own other copyrights where you are only
25 a partial owner?

bd-11-9

1 A. The normal thing today is the artist becomes co-
2 publisher, and takes 50 percent of the publishing and all of
3 the writing, so that we end up with 25 percent of the total
4 income from the publishing.

5 Q. Have your publishing companies been profitable?

6 A. Yes, they're very profitable. They are not
7 large, but there's no risk, and no investment of any sig-
8 nificance, so the publishing companies are always profitable.

9 Q. Well, let me refer you to the statutory criteria
10 again --

11 A. Yeah.

12 Q. -- and ask you whether your publishing company
13 has required any capital investment?

14 A. No, none at all, really. Just the incorporation.

15 Q. And again referring to the criteria, do you
16 consider your publishing companies risky?

17 A. Not at all, because there is no investment to be
18 lost.

19 Q. Have your publishing companies' royalty income
20 been affected by the current slump in the record industry?

21 A. Not particularly, because we have mainly jazz
22 standards, and the income is pretty steady. Also, there is no
23 particular slump overseas, and that's where a lot of our
24 publishing income comes from.

25 Q. Could you please tell us what the phrase "evergreens"

bd-11-10

1 refers to?

2 A. Well, those are songs that continue to be played
3 and recorded over many, many years. That's exactly what the
4 Moms and Dads do.

5 Q. And do you own some evergreens?

6 A. Yes, and jazz things, primarily. Some songs like
7 Dizzy Gillespie and Jerry --

8 Q. Can you name some of them for us?

9 A. Well, I don't know if anyone would know them --
10 Bernie's Tune, Lyon's Lines, an old song the Mom and Dads
11 adapted called the Ranger's Waltz, which has been a big hit
12 in some countries.

13 Q. Do you actively promote their copyrights?

14 A. No.

15 Q. Do you consider yourself to be a typical publisher?

16 A. As far as I know, yes.

17 Q. This Tribunal, however, has heard testimony from
18 representatives of Chappell Music, Lowry Music, Sumac, and
19 others, who have testified at great length about how exten-
20 sively they promote their copyrights. They talk about how
21 they make demos and how they give advances to struggling
22 composers, and hire song pluggers, and invest in expensive
23 recording equipment, and they have at least suggested that
24 these kind of activities typify those of modern publishers.
25 Would you agree with that?

1 A. No, that's totally outmoded information. When I
2 was a DJ, publishers would occasionally come to see me, to
3 see if I would play a record. Even then, they were out-
4 numbered, probably, 10 to 1 by the record companies. No one
5 calls on me to try to get me to record a song, or to help me
6 with a song after I have recorded it.

7 I was curious, that very often, doing old songs,
8 we have great difficulty finding out who the publisher is.
9 We don't know who to pay. And it's an added burden to us.
10 In other words, the publisher of some of the older songs is
11 so far removed, that nobody even knows who the publisher
12 is, and then eventually they show up somewhere down the line
13 and we pay them.

14 Q. You're not representing, are you, that no publishers
15 engaged in the kind of activities that the representatives
16 of Chappell and the others testified about?

17 A. I'm not specifying that at all, but since I am
18 a small company and our sales are limited, the publishers
19 probably do not consider --

20 Q. So representatives from the publisher don't come
21 to you?

22 A. No. I don't hear from them, no.

23 Q. Let's talk about Crescendo Records. Did your
24 record company finish in the red or the black in 1979?

25 A. No, we lost money in '79. It was a very bad year.

bd-11-12

1 Q Why did Crescendo lose money in 1979?

2 A Well, because our sales were down 28 percent. Our
3 rate of returns was enormous, and our costs were up 35 per-
4 cent, in the two years, '78 and '79. It was just a terrible
5 cost-price squeeze.

6 Q Well, let's talk about your prices. Have you
7 increased prices, in order to offset this cost-price squeeze?

8 A No, we increased our price at the end of 1978
9 with the advent of the mechanical royalty raise, but that
10 was the first and only time we raised prices in five and a
11 half years.

12 Q So you raised prices once in five and a half years?

13 A In five and a half years.

14 Q And what was the percentage increase in that price?

15 A Fifteen percent.

16 Q So you raised your prices by 15 percent once in
17 five and a half years, and in the last two years alone, your
18 costs were up about 35 percent, you said?

19 A Well, let me check on how many years it took us to
20 get a 35 percent cost increase -- yeah, a three-year
21 increase.

22 Q Three years?

23 A Yeah.

24 Q So your costs went up about 35 percent in three
25 years?

1 A. That's right.

2 Q. Let's look at those costs a little more closely.

3 Which costs in particular have increased?

4 A. Well, the basic product costs. Pressings are up
5 31 percent. Paper is up 25 percent. Fabricating albums is
6 up 45 percent.

7 MR. GREENMAN: Could I ask the witness to slow down
8 a bit, and read the numbers once more?

9 THE WITNESS: Slow down? Fine, the price of a
10 pressing went up 31 percent. The price of printing the
11 paper for covers went up 25 percent. The price of fabricating
12 jackets went up 45 percent. The price of mechanical royal-
13 ties went up, for us, 50 percent, instead of 37-1/2 percent.

14 MR. SHERMAN: We will have to stipulate to the
15 Tribunal that Mr. Norman is under an occupational disability,
16 because of his history as a disk jockey. He tends to speak
17 more quickly than --

18 THE WITNESS: Oh, I'm sorry.

19 MR. SHERMAN: -- than we would ordinarily be
20 accustomed to.

21 BY MR. SHERMAN:

22 Q. In light of these cost increases, why haven't you
23 increased your prices recently?

24 A. Well, because I compete at the very first level
25 with -- some of whom have 200 record companies, and if I

1 increase my price to them, they will be less interested,
2 and as we say, running with my product, and my wholesale
3 price is very much lower than the industry. I net about \$3.28
4 for a \$7.98 LP. That's about 50 cents cheaper than anyone
5 else's \$7.98 distributor price.

6 Q And this is to induce your distributors to carry --

7 A Yes, absolutely, absolutely, because there's no
8 great volume to my product, so they need more money to moti-
9 vate them.

10 Q How have your distributors been doing?

11 A Well, my New York distributor went broke. My
12 Seattle distributor went broke in 1979, and a great source
13 of income for us was TV marketing, which was done very
14 successfully by GRT, and they went broke, and owed me a great
15 deal of money.

16 Q So you've been talking about keeping your prices
17 low, so your distributors will carry your product. We have
18 heard testimony in this proceeding before about consumer
19 price sensitivity, and you're now suggesting that there is
20 also distributor price sensitivity?

21 A Absolutely. There's just not that much demand
22 for our product that we can demand a high price for it.

23 Q Are there any particular practices in the jazz
24 area, that make your market even more sensitive to price
25 considerations?

bd-11-15

1 A. Yes, a real cancer in our industry is bootlegging.
2 I don't think anyone counterfeits my product, because it's
3 not worth it, but almost all the radio shows that feature
4 anyone from Duke Ellington to Count Basie to Benny Goodman
5 to Charlie Parker, are now in the record stores as bootlegs,
6 and they don't pay anybody anything, but they sort of
7 vitiate my marketplace.

8 There's a ton of bootleg jazz albums. Everyone
9 who was ever a record collector -- there are several people
10 that I know, for example, who work in radio stations, who
11 have had air checks, as we call them, of big bands, and they
12 are just all coming out on the market. And I think the
13 publishers should go after them, because that's a great
14 source of income, if you could find it.

15 COMMISSIONER COULTER: Excuse me, sir. By boot-
16 legging, do you mean they're taking the albums out of the
17 radio --

18 MR. SHERMAN: I was just going to ask him to define
19 it for you.

20 COMMISSIONER COULTER: I'm sorry.

21 MR. SHERMAN: It's a term of art.

22 THE WITNESS: See, a pirate is a man who will
23 take my album and put it out in another form. He's a pirate.
24 A counterfeiter is a man who will actually reproduce the
25 album as it is -- a counterfeit. A bootlegger is a man who

1 will take a performance and release it without the authori-
2 zation of the artist, or the record company. In other
3 words, if Benny Goodman or Duke Ellington played in 1938
4 from some hotel, there were people who were collecting those
5 tapes and records then, and now they're putting them out
6 as albums, and the stores are full of them.

7 And no one seems to care about it. It's interesting
8 -- I guess it's too marginal to bother with.

9 BY MR. SHERMAN:

10 Q. Bootlegging also refers to unauthorized taping at
11 live concerts?

12 A. Yes. Let me give you an example of how that works.
13 There was a very great jazz pianist by the name of Art
14 Tatum, who, in the Thirties -- many transcriptions were made
15 as supplemental music for radio stations, as well as records,
16 and made some broadcast tapes for a company called Standard,
17 and I located some of those old transcriptions, because I
18 remembered having played them in radio stations in San
19 Francisco and LA; and I approached his widow and I gave
20 her quite a good deal of money to legitimize these tran-
21 scriptions as records, and she has made some income from it.

22 And, lo and behold, somebody else just issued
23 the same transcriptions as records, as bootleg records.
24 That's what I'm referring to.

25 Q. As you know, Mr. Norman, we are here to consider a

bd-11-17

1 rate increase over and above the last increase voted by
2 Congress. The music publishers have proposed a 6 percent of
3 list mechanical rate. What would be the impact on Crescendo
4 Records if the Tribunal were to accept that proposal?

5 A. Well, our mechanical rate would go up 50 percent.
6 I'm paying 9 percent of most sales to publishers now, and
7 it would go up to 14.4 percent of most sales.

8 It's very important to remember that the only
9 thing we see is the first sale. We don't see \$7.98. I see
10 \$3.28 for a record. I don't see -- the retail is fictitious.
11 Records don't sell for that, even in the record stores -- so
12 that if the rate was increased to 6 percent of retail, I
13 believe that would be 14.4 percent of my wholesale.

14 Q. Because your present mechanical rate is 9 percent --

15 A. Yes. Last year, I paid 9 percent of my gross
16 revenues on domestic sales of the music for mechanical
17 royalties.

18 Q. If the Tribunal were to adopt the NMPA proposal,
19 what kind of measures would you take within Crescendo
20 Records?

21 A. Well, I simply wouldn't have enough money to make
22 new records. I would probably just sit there and try to sell
23 what I had, which would restrict all kinds of new artists --
24 restrict the artists that I have. We simply wouldn't have
25 any recording budget.

bd-11-18

1 Q Are there other small recording companies similar
2 to Crescendo?

3 A Yes, there are probably 100 of them. I don't know.
4 I went to a convention in Kansas City of companies --

5 Q What do you think would happen to them if the
6 mechanical rate increased?

7 A They would be in much worse shape than I am,
8 because at least after 26 years I have a catalogue. They're
9 all jealous of me, because I've been putting away these
10 chestnuts for 26 years.

11 Q And what would you say would be the impact of that
12 on the first statutory criterion, which directs the Tribunal
13 to maximize the availability of creative works in setting
14 a mechanical royalty rate?

15 A Well, it would be devastating, I think. It would
16 be a sort of a hiatus in creative activity, as it already
17 is, because of the lack of money.

18 Q What is the role of small companies like Crescendo
19 and the other 100 companies that you mentioned in American
20 musical culture?

21 A Well, small companies usually have the courage of
22 their convictions, artistically. They very often find the
23 great people. The most recent fad in the music business,
24 whether you like it or not, is disco, and that was started
25 by small companies. And all through the history of our

1 industry, it's the small companies that start the new trend
2 and the new idea, and we will take a chance on artists that
3 nobody else wants.

4 Q Are you suggesting that the musical trends picked
5 up by small record companies, find their way into the main-
6 stream of American music?

7 A Oh, there's no question about it. I think the
8 most dramatic example of that is country music, which was
9 started by small companies in Nashville, and now everybody's
10 in it.

11 Q Are there any other examples that you can cite for
12 us?

13 A Well, sure. Jazz itself was started by small
14 labels. It was the small labels in the Thirties and Forties,
15 Commodore and Blue Note -- these are the people who made
16 the -- and then the majors picked it up after that.

17 Q Let's turn to the CRI survey for a moment. Did
18 you respond to that survey?

19 A No, because I felt my numbers were so minuscule
20 and insignificant that it wouldn't weight it in any way, and
21 also we have very few employees. It would be difficult to
22 dig all of that out.

23 Q There has been some testimony about the break-even
24 point, comparing the break-even for a small company with
25 that of the 140,500 album figure that appears in the CRI

1 survey. Would the 140,000 figure be correct for Crescendo?

2 A. I think the biggest album I've ever had sold
3 180,000.

4 Q. What is the general size of your --

5 A. Well, it depends. I mean, this album cost about
6 \$18,000 -- I would probably have to sell 15,000 albums, or
7 perhaps 20,000, to come out even. And this one probably
8 cost \$15,000 -- for this, the break-even is earlier, in
9 spite of the fact that there is twice as much mechanical royal-
10 ties to pay, because these people are just four people, and
11 they own the studio, a four-track studio in their home town,
12 and their recording costs are very small. Of course, they
13 make tremendous royalties after that.

14 So it depends totally on the album.

15 Q. About what percentage of your albums fail to break
16 even?

17 A. I would say about 50 percent.

18 Q. And when you have a big winner, how many do you sell?

19 A. Well, as I mentioned, the peak, in my memory, is
20 about 200,000 albums.

21 Q. Let's turn to the publishers' proposal for a 6
22 percent royalty; and first, let's examine the concept of a
23 percentage royalty. Do you believe that a percentage royalty
24 would be a fair system for this Tribunal to adopt?

25 A. No, it would be really awful for us, because all

bd-11-21

1 of our licenses -- I guess maybe 2,000 of them in the Harry
2 Fox office, are stated by unit price, usually the statutory
3 -- well, invariably the statutory. And we would have to go
4 back in time -- every record that we have, every song,
5 every track that we have, in order to discover the length
6 of that song, compared to the others in the album, which
7 would be backbreaking and very difficult to do. It would be
8 an administrative nightmare.

9 Q Well, before we get into that, can you describe
10 for the Tribunal just how you administer the mechanical
11 royalties right now?

12 A Well, we have a lady who is the bookkeeper, who
13 spends all of her time going through our books and deciding
14 how many records we sold of a given song. She then compiles
15 a list, by each publisher, decides how much we owe each
16 publisher, and then every six months we send a stack of
17 individual reports on each publisher to the Harry Fox office.

18 And I would say it takes her about two or three
19 months twice a year to do that, to pay the publishers.

20 Q Just to pay the publishers under the existing flat
21 rate system?

22 A Right. Exactly.

23 Q Now, what would be the administrative burden you
24 were talking about of a percentage royalty?

25 A Well, we would have to go back and time all of the

bd-11-22

1 records, and the administration of it would be horrendous,
2 because we would probably have to go on a computer, or
3 hire another person.

4 Q. And how many people do you now have?

5 A. There are just five of us, including me.

6 Q. And one person does the royalties?

7 A. Yeah, one person does all the royalties. Another
8 lady does all the accounts receivable.

9 Q. Thank you. We were talking about the administra-
10 tive complexity of a percentage royalty. What about the
11 concept of a percentage royalty?

12 A. Well, it's full of inequities, really, because
13 what if we want to do less songs? I have an artist who is
14 a comedian, whose name is Rusty Morgan, who opens and
15 closes her show with a song. Should we pay a percent of
16 the retail for that?

17 MR. SHERMAN: It should be noted for the record
18 that the publishers have stipulated that they would revise
19 their proposal to take into account that kind of situation.

20 THE WITNESS: Yes, and also, if we put out audio-
21 phile records that sell for much higher prices -- do we
22 get six percent of the increase, because the contribution
23 is all technology?

24 And, besides, the most important thing of all is
25 if OPEC raises the price of oil, and we have to raise the

bd-12-1

1 price of the records, I don't feel as though the publishers
2 should enjoy that raise, based on a percentage.

3 BY MR. SHERMAN:

4 Q Let's turn to one last subject, and that is the
5 compulsory license. Do you ever use the compulsory license?

6 A No, we never have had to demand the right to
7 record a song, because after a song is recorded in this
8 country, everyone has access to it.

9 Q The Tribunal has heard extensive criticism,
10 especially from the economists for the music publishers,
11 about the evils of a compulsory license system. Do you think
12 that a compulsory license system is --

13 A No, not at all. In my 35 or 40 years in the
14 music business, I've seen how songs have new value, because
15 someone else did a different and unique version of it.
16 That's happened probably 10 times with Begin the Beguine and
17 all kinds of other songs.

18 MR. ZUCKERMAN: Mr. Sherman, I think that you
19 should clarify that Mr. Nathan by no means criticized the
20 practice of having cover records made of songs, and also
21 in fact did not criticize the practice of -- the effect of
22 the compulsory license, insofar as that effect is to pro-
23 hibit exclusivity and to allow additional records to be made
24 of songs.

25 MR. SHERMAN: Thank you for clarifying the record

bd-12-2

1 about Mr. Nathan's testimony.

2 BY MR. SHERMAN:

3 Q Why do you feel that the compulsory license is
4 necessary?

5 A Why do I feel that it is necessary? Because it
6 broadens the whole horizon of cultural activity. I can tell
7 you story after story about how the 25th version of a song
8 made all the others fade beside it. People like different
9 kinds of music. Maybe some lady in North Dakota wants to
10 hear the Mom and Dads' version of a song, and no one else
11 would do it. So everyone should have the right to have access
12 to our musical literature.

13 Q What would happen if there were no compulsory
14 licensing system?

15 A Well, it's very obvious -- that if there was a
16 great song, a great piece of material, then some larger
17 company would bid for it, and raise the price and have a
18 monopoly on it, and have exclusivity.

19 Q Do you mean to say that the larger company would
20 tie up the song?

21 A Of course. It's a very valuable property.

22 Q And that would prevent smaller companies such as
23 Crescendo from recording the song?

24 A Right, from making our versions of it with our
25 artists.

1 Q Do you feel that you are the only beneficiary of the
2 compulsory license?

3 A No, I think that every record company is, and every
4 artist is.

5 Q What about the public?

6 MR. GREENMAN: Madam Chairman, could I raise an
7 objection of relevancy? I was not aware that we were recon-
8 sidering the compulsory -- whether we were going to have a
9 compulsory license.

10 MR. SHERMAN: Then you should have been here when
11 Mr. Nathan --

12 COMMISSIONER BRENNAN: At least one Commissioner
13 has asked this --

14 CHAIRMAN BURG: We won't indicate which Commissioner
15 that was.

16 COMMISSIONER JAMES: But let the record clearly
17 show.

18 (Laughter.)

19 BY MR. SHERMAN:

20 Q I asked you about what you think the impact of the
21 compulsory license is on the public?

22 A Well, simply that every -- the public has a chance
23 to enjoy different versions of the same song. Every artist
24 brings a new contribution, a new creative approach to the
25 song, that's sui generis to that artist. It's unique to them.

1 Q And what about publishers and composers?

2 A It's delightful for a composer or publisher to
3 find out that someone else did their song, usually while they
4 were sleeping.

5 Q Thank you, Mr. Norman. I have no further ques-
6 tions.

7 CHAIRMAN BURG: Mr. Norman, you made a remark that
8 your overseas income or business was pretty good, because
9 they haven't suffered the slump that this country has?

10 THE WITNESS: Right.

11 CHAIRMAN BURG: We heard testimony last week from
12 Mr. Thomas in Great Britain --

13 THE WITNESS: I know him.

14 CHAIRMAN BURG: -- which indicated that, as I
15 recall, he was speaking of the United Kingdom, but he may
16 also have spoken somewhat generally about Europe -- that
17 they too reflected, in his words, doldrums, with respect to
18 record sales, in 1979 and since that time.

19 THE WITNESS: Well, since -- the royalties we
20 receive from Europe are sometimes a year or two behind, and
21 I haven't seen it yet.

22 CHAIRMAN BURG: Is that generally the --

23 THE WITNESS: Yes, it is. ASCAP and BMI pay a year,
24 year and a half later for their royalties overseas.

25 CHAIRMAN BURG: Then I want you to explain to me

bd-12-5

1 again why you say your mechanical royalties are up 15
2 percent?

3 THE WITNESS: Yes, I'll explain that -- because the
4 rate went up 37-1/2 percent, and in order to stimulate sales,
5 I started to do two-record sets. So, instead of 10 songs
6 on this album, there are 22 songs. There are 22 songs in
7 this album, too. So the result is that I was paying more
8 mechanical royalties, so it became a larger piece of my pie,
9 but I found that that's an effective way to sell records
10 by using more songs.

11 In other words, when a lady goes into a record
12 store, she sees a special two-record set -- she's getting
13 two records for the price of one. But it's certainly an
14 additional burden to me, to put two records in an album for
15 \$7.98.

16 CHAIRMAN BURG: Thank you.

17 COMMISSIONER COULTER: Mr. Norman, from what you
18 were saying at the beginning of your testimony, you indi-
19 cated what at least I perceived as a real affectionate
20 interest in the talent that you deal with.

21 THE WITNESS: Yes.

22 COMMISSIONER COULTER: And just as a general ques-
23 tion, why wouldn't you be pleased to see them get more money
24 for their work?

25 THE WITNESS: You're talking about the composer?

bd-12-6

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COMMISSIONER COULTER: Yes.

THE WITNESS: Most of the songs we do are standard songs, some of which are 35 and 40 years old. They're all old songs that may have earned hundreds of thousands of dollars, in most cases. People forget that they have them in the catalogue. When Frankie Lane recorded "That's My Desire," the publisher didn't own it any longer, because it was a catalogue that had been purchased.

So I would like to see songwriters get more money, sure, but I've heard it said that the art of the business is the art of getting someone else's money. I'm the one that's going to have to pay for all of it, so it's me that is going to have to pay them. Maybe if I changed the name of my company to Chrysler Records, maybe I could get some government support.

(Laughter.)

THE WITNESS: But in the meantime, we have a very small company. We have to watch every penny, and we feel that we didn't understand that 37-1/2 percent increase that came two years ago. That was a tremendous jump for us. So we are doing either standards with the Mom and Dads, or the jazz, because Anita O'Day does all standards, Joe Williams does all standards -- or we have -- I have a Cajun group, the Queen Ida and the Zydeco Band, who did a tour of France. I want to make this very clear, that my

1 catalogue has great value culturally. We have won many
2 cultural awards in Europe for jazz records. One of my artists
3 toured France, and had a great deal of --

4 COMMISSIONER COULTER: In your catalogue -- are
5 you also including the songs that you have in your catalogue?

6 THE WITNESS: In my catalogue, do I include the
7 songs --

8 COMMISSIONER COULTER: Yes, when you say your songs,
9 I assume you're talking about -- they're the performances,
10 which are the records, and then there are the songs.

11 THE WITNESS: Well, we have -- we publish some of
12 the songs, although not nearly as much as most record com-
13 panies, because most of my artists don't write songs. I
14 would just estimate that only 10 percent of the things on our
15 records, we own as publishers.

16 COMMISSIONER COULTER: When you say your catalogue
17 is terribly valuable --

18 THE WITNESS: Oh, I mean my record company cata-
19 logue. Several of them have won cultural awards in France,
20 and this group that's currently touring -- this marvelous
21 woman from Louisiana has a Cajun band, and she sings in
22 French, and the French respond to her very favorably. They're
23 national heroes in Sweden, and I think that our musicians
24 do a better job of foreign affairs and public relations
25 than our statesmen do.

1 The only thing the French people love about us is
2 our music. I think that's unequivocally true. So that's
3 part of the value of this catalogue, as modest as it may be.

4 CHAIRMAN BURG: Commissioner James?

5 COMMISSIONER JAMES: Nothing.

6 CHAIRMAN BURG: Which one of you is going to --

7 MR. ZUCKERMAN: We will go first this time, Madam
8 Chairman.

9 CROSS EXAMINATION

10 BY MR. ZUCKERMAN:

11 Q Mr. Norman, I believe you testified that disco
12 was a trend that started with the small record companies; is
13 that correct?

14 A Well, I'm not an authority on disco, but I believe
15 that's true.

16 Q But generally, you testified that small record
17 companies tend to be trailblazers?

18 A Pioneers, right.

19 Q And the larger record companies tend to follow the
20 lead of some of the small record companies?

21 A Yes, they do. They -- shall we say, they jump on
22 things when they get hot.

23 Q And when a small record company starts a trend,
24 or starts what it hopes will be a trend, it undoubtedly has a
25 great risk in doing that?

bd-12-9

1 A. Right.

2 Q. And once the small record company has taken that
3 step and started some excitement about that, and the large
4 record company comes in, the large record company has a much
5 lesser risk, isn't that so?

6 A. A much lesser risk?

7 Q. The large record company takes less of a risk
8 than the small record company.

9 A. Well, provided they have the skills, and know
10 exactly how to go with that trend.

11 Q. Well, obviously, we have to assume that we're
12 talking about a company that knows what they're doing.

13 A. Right.

14 Q. And if a large record company knows what it's doing
15 and is well-managed and simply picks up on a trend that has
16 been started by a small record company, it can greatly
17 minimize the risks of the business; is that so?

18 A. I suppose that's true.

19 Q. Because companies like your companies have
20 pioneered the way.

21 A. To some degree, yes.

22 Q. Now, do you expect that disco will be a long-term
23 trend in the record business?

24 A. No, I really do not. It's too monotonous and boring
25 and the public soon will get tired of it.

1 Q I agree with you.

2 (Laughter.)

3 Q And that also may be something that we may be able
4 to get agreement, at least among some members.

5 A Well, it did a world of good, because it got
6 people dancing and actually --

7 Q All right, but disco is now fading out?

8 A Yes, it's a four-letter word.

9 Q Are there other trends that have come and gone in the
10 record business?

11 A Oh, yes, there have been dozens of them. A small
12 company called A & M started with Herb Alpert, sort of Mexican
13 jazz -- Tijuana, and that became a trend -- and Creedence
14 Clearwater, a small company called Fantasy, doing the deep
15 south blues with a rock group -- every year, practically,
16 there's something. The most recent example was George
17 Thorogood, who is on a small label out of Boston called
18 Rounder, who does sort of bluegrass rock -- small companies,
19 generally.

20 Q How long did you say you have been in the record
21 business?

22 A Twenty-six years as a record company owner, and
23 probably six years before that.

24 Q When was the first time in that 34-year span that
25 you came across a singer who wrote his own songs?

bd-12-11

1 A. I'm trying to think back --

2 Q. I'm not asking for a precise year. If you can tell
3 me approximately --

4 A. Well, my impression of the way this evolved is
5 that in the beginning, there were songwriters and there
6 were artists, and the songwriter would submit a song to
7 the artist, and the artist would decide whether he wants to
8 record it or not.

9 Then the songwriter himself started to sing the
10 song, and that's the way it evolved.

11 Q. Was it usually that the songwriter started to become
12 the artist, or that the artist started to become the song-
13 writer?

14 A. No, no, the songwriter became the artist.

15 Q. Were you in the room this morning during Mr.
16 McCracken's testimony?

17 A. Yes, I've heard him say the artists, but I'm
18 not familiar with the gospel business.

19 Q. So, at least with respect to the segment of the
20 business that you're familiar with, it was the songwriter?

21 A. Yeah, the songwriter became the artist.

22 Q. And when did you say that you first noticed that
23 occurring in the business?

24 A. It's too abstract for me to answer. I've never
25 been involved in vocalists very much, really. I had one

bd-12-12

1 rock group that was very successful called the Seeds,
2 and they wrote all their own songs. That was probably the
3 first time that I got involved in the songwriting -- they
4 wrote everything themselves.

5 Q Do you think that the trend which has been des-
6 cribed, of songwriters becoming artists, and singers
7 writing their own songs, is a permanent, irrevocable trend
8 in the music industry?

9 A Yes, I really do.

10 Q You don't think it's a trend, like disco, that may
11 come and go?

12 A No, no. I think the public will accept the song-
13 writer doing his own material. In the old days, we were
14 concerned with the formalities, like microphone technique and
15 pure pitch and intonation, and whatever -- voice, and
16 pronunciation of words, but the world has changed dramatically
17 since then. People accept the songwriter doing his songs,
18 almost regardless of how bad his voice is, because it's
19 his material. It's his sincerity, and sincerity is the key
20 to a hit record.

21 I heard someone say once that the thing that
22 makes a hit record is the sincerity. When a man sings his
23 own song, you believe him, because he's lived it.

24 Q Do most of your artists sing their own songs? Or
25 do they sing songs written by others?

1 A. Most of my artists do standards. Joe Williams
2 does standards, Anita O'Day does standards. My Cajun
3 group has adapted old things that they learned as children
4 on the bayou, and they write -- they are so-called writers
5 of this material.

6 CHAIRMAN BURG: Your Milwaukee organ -- what does
7 he do, the polkas that he --

8 THE WITNESS: Well, a lot of waltzes, and he
9 becomes the writer of the arrangement and the co-publisher.
10 His name is Bob Cates (ph.). He is a very good organist.

11 BY MR. ZUCKERMAN:

12 Q. Do you think that these groups which perform
13 standards, perform songs written by others, will always
14 remain a part of the record industry?

15 A. Yes, I do think so.

16 Q. And I assume that you do hope they will?

17 A. Well, it's very convenient to have an artist like
18 the Mom and Dads, who just know all the songs -- the old
19 songs, and they know exactly what they --

20 Q. You testified also that you had some artists who
21 were popular in France.

22 A. Yes.

23 Q. What were the names of those artists?

24 A. Well, there was Clifton Chenier, and Queen Ida and
25 the --

1 Q What was the album? What is the most recent album
2 of those two artists that you mentioned, Clifton Chenier and
3 Queen Ida?

4 A Well, Queen Ida just made a brand new one, her
5 third for our label, and it hasn't been released yet. It
6 will be released as part of my August release.

7 Q What is her most recent album that has been re-
8 leased?

9 A We put out usually one a year -- a year ago.

10 Q Can you tell me approximately what the sales of her
11 most recent album were, in the United States?

12 A Probably 4,000 albums.

13 Q And what were the sales in France?

14 A I haven't seen that report yet, but it will approxi-
15 mate that, and in Sweden it will approximate that.

16 Q So there might be 4,000 in the United States,
17 another 4,000 in France --

18 A See, the thing about these records is that they
19 never stop selling. They're not chart records. We cut out
20 almost nothing from our catalogue. They just stay there,
21 and they always seem to sell, to some small degree. It's
22 what I call a laundry list. Our distributors order 12 of
23 this, and six of that, and 20 -- it's just a standard busi-
24 ness.

25 Q Well, I realize that -- I'm not going to hold you to

bd-12-15

1 these figures in 1987, but as of now, it would be approximately
2 4,000 in the United States, and another 4,000 in France,
3 and then you said another 4,000 in Sweden?

4 A. Yeah, perhaps. I mean, we can hope to sell maybe
5 10,000 albums, internationally.

6 Q. So what other countries besides France and Sweden
7 would it be popular in?

8 A. None. The Japanese are not into it, the English --
9 the Italians are not interested, Germany has not been
10 interested.

11 Q. So, on that particular album, which I believe you
12 said the artist was Queen Ida?

13 A. Queen Ida, yes.

14 Q. You might project twice the volume of sales
15 abroad that you would have in the United States?

16 A. Perhaps.

17 Q. What was the other artist you mentioned who was
18 popular in France?

19 A. Clifton Chenier.

20 Q. Clifton Chenier?

21 A. Yes.

22 Q. And what were the sales of his most recent album in
23 the United States?

24 A. About the same. We sold probably 5,000 albums.
25 We hope to sell maybe 3,000 in France, and maybe 2,000 or

bd-12-16

1 3,000 in Sweden. It's about 10,000.

2 Q So there again the sales abroad would at least
3 equal, if not exceed, the sales in the United States?

4 A Yeah. Generally, the way the record industry is
5 constructed internationally, we always assume that the
6 United States is 50 percent of the world market, and the rest
7 of the world is 50 percent. In this case, 50 percent would
8 be gleaned from these two places. Normally, a record
9 company counts on a normal rate of return, 50 percent from
10 overseas.

11 Q Mr. Norman, do you know what the mechanical royalty
12 rate is that is paid on the Queen Ida or Clifton Chenier
13 records that are sold in France?

14 A Well, I understand it's a percentage of the retail
15 price less the VAT -- less the packaging deduction, less
16 the sub-publishing, so it's -- I'm really not too clear on
17 this, but it's a percentage of the retail less a lot of
18 important deductions, and I have to give my Franch publisher
19 a piece of it, you see.
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JW13-1

1
2 BY MR. ZUCKERMAN:

3 Q Mr. Norman, I would now like to hand you a copy of
4 RIAA Exhibit "N" with the additions and corrections made during
5 the cross examination of Ian Thomas by the National Music Pub-
6 lishers Association.

7 And this was during Mr. Thomas' testimony last
8 Thursday before the Tribunal. And I can represent to you that
9 during that testimony Mr. Thomas described that for a typical
10 record in each of these countries the actual royalty paid as
11 computed under the BIEM system were the figures that are indi-
12 cated in the column headed "Actual Royalty Paid," typed in on
13 this chart.

14 And I would draw your attention in particular to the
15 line that says "France" where it says "Actual Royalty Paid 64
16 Cents."

17 Does that coincide with your information as to what
18 royalty is paid on your records that are sold in France?

19 A I'm not that familiar with it but if it is indeed
20 accurate, I hasten to point out that the artist is co-publisher
21 so that any income that comes on publishing would be split with
22 them.

23 Q I'm talking now about the total mechanical royalty
24 paid. And this was a computation of the total mechanical
25 royalty paid. And my question again is: Is the 64 cents about
the figure of the mechanical royalties paid on your records for

1 the artist that we mentioned that sells records?

2 MR. SHERMAN: I think Mr. NORMAN should be informed
3 that the prices for the records on that chart or for front
4 lying highest-priced products -- I have no idea what
5 performance records sell for.

6 THE WITNESS: Yes, in France, because records
7 are so expensive. I know that most of my records are
8 released at that price.

9 BY MR. ZUCKERMAN:

10 Q Do you know what price your product is released
11 at in France?

12 A Well, different things at different --
13 Each album is an individual decision on the part of the
14 French company, depending on their feeling about the
15 profitability of the album. Most of my records in France
16 were released on the mid-priced line, which probably is
17 35 per cent cheaper than the full priced line. In other
18 words, if a record sells for \$9 in France, the records
19 that my -- the label that my records are on are probably at
20 \$6.

21 Q So then you would expect that the mechanical
22 royalty that would be paid on your record would be --
23 presumably be 35 per cent less than the mechanical royalty
24 paid here?

25 A Right.

1 Q So instead of a 64-cent mechanical royalty
2 payable on your record in France, because of the lower
3 prices, it would be 65 per cent of 64 cents, which, I
4 believe, comes to 42 cents.

5 A Yes.

6 MR. SHERMAN: Please.

7 THE WITNESS: All right, it takes 42 cents less
8 25 per cent that the publisher takes, what is left after that
9 is 75 per cent of 42 cents and what is left after that is
10 half of that. Half of that -- of the money that is left,
11 the writer and composer gets 75 per cent of that, unless
12 they are both the writer and the publisher.

13 MR. SHERMAN: We have never actually established
14 whether albums for which Crescendo is the publisher.

15 THE WITNESS: Well, we are talking about
16 Queen Ida.

17 MR. ZUCKERMAN: I do want to get into that, but
18 let's talk first about Crescendo as the record company.

19 BY MR. ZUCKERMAN:

20 Q Crescendo as the record company would pay a
21 mechanical royalty in France equal to 42 cents, and I think
22 that came out to 41.6 cents.

23 A Yes, right.

24 Q For an LP.

25 A The French record company would pay that to the

1 BIEM or SACEM.

2 Q But the total mechanical royalties paid on
3 your record in France would be 42 cents?

4 A I believe that would be, yes.

5 Q Let's go to Sweden, then. Where on this chart
6 presented by Mr. Thomas with additions made during his
7 testimony, it indicates actual royalty paid on a
8 record selling in Sweden for \$9.98 would be 58 cents.

9 A Uh-huh.

10 Q What do your records sell for in Sweden?

11 A Well, in Sweden, we exploit records in Sweden.
12 They are now going through the pressing of the third
13 Queen Ida album. We made a co-production deal with them
14 that put up half the money. The first two albums were
15 exported, so we paid the mechanical royalty rate in this country.

16 Q And on the ones that are pressed in Sweden, you
17 will pay the rate in Sweden?

18 A Yes, but I don't know what -- to put it out,
19 because they just received the production --

20 Q If they sell for the same level price here,
21 then presumably you would also pay 58 cents?

22 A I would also pay 58 cents? No, they would also
23 pay 58 cents.

24 Q Well, I don't mean that. I mean --

25 A No, they pay it. I don't pay it.

1 Q Well, who pays it?

2 A Well, Sonad records, which is my Swedish
3 affiliate, pays their local collecting society.

4 Q The foreign record company that puts out the same
5 album that you put out in the United States --

6 A Yes.

7 Q -- would pay the Swedish royalty under the BIEM
8 system --

9 A Yes.

10 Q -- which comes to 58 cents.

11 A Well, it is complicated. My Swedish company
12 is also my Swedish sub-publisher, so they would pay a
13 publishing firm, deduct their share of the copyright,
14 mechanical, and send me the remainder. When they send me
15 the remainder, which is usually 75 per cent, I then give
16 75 per cent of what is left to the artist, who is also --

17 MR. SHERMAN: The record should be clear that
18 the 58 cents is premised on the assumption that we saw the
19 first line high priced level.

20 MR. ZUCKERMAN: Okay, that is -- I think the
21 record is clear on that, and if not, I appreciate your
22 clarification.

23 BY MR. ZUCKERMAN:

24 Q Let's assume that it is sold at 65 per cent
25 of the high priced level, which is what has occurred in

1 France. Well, rather than making that assumption, let
2 me ask you on the prior records that were marketed in
3 Sweden, what was the price level of those records?

4 A You mean that we paid the royalties on?

5 Q No, because you testified you paid royalties
6 at the American rate.

7 A Oh, yes.

8 Q I want to know what those records sold for in Swe-
9 den.

10 A I have no idea. We sell them like I sell to
11 my distributor in Cleveland or Chicago, they just buy it
12 on the distributor cost and pay for the freight and shipping
13 to Sweden. So I don't know what they sell for.

14 Q So then we will go back to the earlier assumption
15 that I was going to make, which is that if they sold for
16 say 65 per cent of the front line price, 65 per cent of the
17 50, the price that produced the 58-cent royalty, you would
18 then have a royalty of 38 cents, is that correct?

19 A Yes, I assume it is correct.

20 Q Now, has the -- to your knowledge, has the
21 payment of mechanical royalties on your records released
22 in France and in Sweden at these higher levels than mechanical
23 royalties are paid in the United States impeded the sales
24 of these records?

25 A I would say so, because records are more
expensive generally.

1 Q But the volume of records that you sold in
2 France and Sweden combined, the first album that you
3 mentioned, was twice what you sold in the United States?

4 A Well, it is a sort of unique flavor that they
5 have, and that happens very often, the popularity, it
6 becomes a hit somewhere else. In the United States, the
7 only people who buy Cajun records are people in East Texas,
8 Louisiana, some in San Francisco, where there is a
9 community of Cajuns, a very limited market in the U. S.

10 Q Let me --

11 A It has been accepted as a general music in France,
12 because they sing in French. How many people want them
13 singing in French in the U. S.

14 So that is a totally unique situation.

15 Q Let me turn then to the administrative task
16 that would be imposed, if any, upon your company by the
17 adjusting of mechanical royalty rate to 6 per cent of
18 suggested retail list price. I believe you testified that
19 what you would have to do is go back to your catalogue
20 and record all the songs.

21 A Right.

22 Q And time them.

23 A Right.

24 Q So that you could compute the -- how the 6 per
25 cent would be allocated.

A Right.

1 Q Now, I am going to hand you some of the records
2 that you displayed to the Tribunal and ask you first on
3 the album "The Very Best of the Mom and Dads," would you
4 have to time and record the length of the songs on that
5 album?

6 A Well, the times are on this one.

7 Q So all you would have to do is take out a copy
8 of the album and look them up?

9 A Well, that is true in this case. Yes.

10 Q Well, what about this case. "Greatest Science
11 Fiction Hits."

12 A I know, but the point is that all the licenses
13 would have to be allocated according to how many songs there
14 were on the album.

15 Q We will get to that in a second, first, I want
16 to get to the question of whether you --

17 A We have the times, of all the records, of course.

18 Q Then you would. So just so that the record is
19 clear then, and your testimony is clear, you did not have
20 to time all the records, what you have to do is take out an
21 album and look up the time, which is on the album.

22 A Yes. We -- it has been necessary to time all
23 records for many reasons,

24 Q You wouldn't --

25 A To see what the cumulative time is -- to see if

1 it would master. Also as we pay now, we have to pay more
2 for anything over 5 minutes as the statutory rate.

3 Q But now you have already times all of the songs
4 for these other purposes. You have all of the times on
5 file, and all you have to do is go to your files and
6 look them up either on the album or on the label.

7 A Yes, we would have to do that approximately
8 for approximately 2500 copyrights.

9 Q All right, you wouldn't have to time them?

10 A No, we wouldn't have to time them. We know the
11 times of the masters.

12 Q And that would be true of virtually all of your
13 albums?

14 A Yes. We have the times.

15 Q Let's get to the second point then, which is
16 how you would compute the mechanical royalties that would
17 be payable on an album. Let's start first with the album
18 that says, "Prez and Joe," featuring Joe Williams.

19 I will hand that album to you and ask you how
20 many songs are on that album.

21 A There are 10 songs on the album.

22 Q Are you aware what the NMPA proposal is in terms
23 of dividing the 6 per cent royalty among the songs on the
24 album?

25 A Well, I think that they weighted it according
to the times.

1 Q Are you aware of what the weighting system is
2 that was proposed by NMPA?

3 A Not exactly, no.

4 Q I can describe briefly for you for the record
5 and Mr. Sherman will correct me if I am inaccurate, the
6 proposal that songs would be allocated a number of units
7 -- that songs of less than one minute in duration would be
8 allocated one-third unit, songs of between one minute and
9 five minutes would be allocated a single unit.

10 And songs over five minutes would be allocated
11 two-tenths of a unit per minute of playing time, in other
12 words, a song of up to 6 minutes, between five and six
13 minutes, would get 1.2 units.

14 And what I would like to do now, just so we see
15 the -- whether this really is a burdensome administrative
16 task, is go through a few of these albums with you and see
17 how the royalty would be divided.

18 On the Prez and Joe album, can you tell me
19 how many songs are on that album?

20 A There are 10 songs, and they are all approximately
21 of equal length.

22 Q They are all between one minute and five minutes
23 in length?

24 A Right, but I do have many albums where there
25 are much longer versions.

1 Q Well, we will get to your other albums.

2 And Mr. Sherman, on redirect, will go to your other albums,
3 if he thinks it is difficult. So under the NMPA proposal,
4 each one of those songs would get a one-tenth share of the
5 6 per cent of suggested retailer's price. Is that correct?

6 A That is correct.

7 Q What is the suggested retail list price of that
8 album?

9 A This is a \$7.98 album.

10 Q So 6 per cent of \$7.98 is 48 cents, and divide that
11 by 10, and you get 4.8 cents per song, is that correct?

12 A Yes.

13 Q Okay, so we have finished one of your albums,
14 that has already increased the task. Let's go on to another
15 album.

16 "The Very Best of the Mom and Dads." Hand you
17 that album and I ask you first of all whether that album
18 shows the playing times of the songs?

19 A Yes, the playing times are on most of our albums
20 -- we do that for radio stations, so they know how long they
21 are.

22 Q Are there any songs with playing times of less
23 than one minute?

24 A No.

25 Q Are there any songs with playing time more than

1 five minutes?

2 A No.

3 Q So under the NMPA proposal, each one of the songs
4 on that album would get one unit.

5 A Uh-huh.

6 Q How many songs are on that album?

7 A 20. 22.

8 Q 22 songs.

9 A Uh-huh.

10 Q Actually, before I go on and compute what the
11 royalty would be under the NMPA proposal, may I ask you if
12 you know what the mechanical royalty was actually paid on
13 that album?

14 A Yes, because it was marketed on television and
15 because it has 22 songs, we did receive 75 per cent of
16 statutory rate on this -- many of the songs on this album.
17 Some publishers refused it.

18 Q Would you say that on most you received 75 per
19 cent of statutory?

20 A Yes, on 22 songs, on one album, we got 75 per
21 cent of statutory. On portions, though, it was obviously
22 50 per cent more than normal.

23 Q I understand that, but I want to talk about this
24 album. Now, do you know how many songs the publishers
25 insisted on the full statutory rate?

1 A Well, no, I don't. It is hard for me to
2 remember this particular album.

3 Q Was it two or three or ten --

4 A Well, there were some publishers who will not
5 give you a rate. I don't -- I have to go through this
6 and -- well, there is one here who will give you a rate.
7 There is another publisher I couldn't find. There is another
8 publisher that wouldn't give me a rate. I will tell you the
9 titles of the songs if you like.

10 Q Just --

11 A Would that help you?

12 Q Just counting them would be sufficient.

13 A Well, I would say that five of the 22 I couldn't
14 get it.

15 Q Okay, so let's -- for five of the songs, you paid
16 2.75 cents.

17 A Yes.

18 Q Is that correct?

19 A Yes.

20 Q And 5 times 2.75 equals 13.75 cents. And then
21 there are a total of 22 per cent.

22 A Right.

23 Q So for 17 of the songs, you paid 75 per cent of
24 the statutory rate. Is that correct?

25 A I believe that is right.

lj 13-58

1 Q And 75 per cent of the statutory rate of 2-3/4
2 cents comes to 2.06 cents.

3 A Roughly 2 cents, yes.

4 Q 2.06 cents times 17 equals 35.02 cents. And if
5 we add together the 13.75 cents that you paid for the 5
6 songs at full statutory and the 35.02 cents that you paid
7 for the 17 songs that were licensed, at 75 per cent of
8 statutory, you get 48.77 cents.

9 A Yes, my memory is that my mechanical royalties on
10 this album were roughly 50 cents an album.

11 Q Okay, what was the suggested retail list
12 price of that album?

13 A \$7.98.

14 Q And 6 per cent of \$7.98 or 6 per cent of
15 \$8 is 48 cents, is that correct?

16 A That is true, but I can't do this very often.
17 It is too expensive.

18 Q We will go on to other albums.

19 A Right.

20 Q But on this particular album, what you are saying
21 is that the mechanical royalties that you actually paid
22 under the current 2-3/4 cent rate were higher than the
23 mechanical royalties that you would have paid had NMPA's
24 proposal been in effect.

25 A Yes, but out of 250 albums in the catalog, I

1 would probably have four like this.

2 Q Well --

3 A So it is a monster. It is not typical.

4 Q We can go on to some of the other albums,
5 but let me do one other question --

6 CHAIRMAN BURG: Mr. Zuckerman; how -- could
7 we -- would you let me ask a question first. If he is --

8 MR. ZUCKERMAN: The witness is available
9 tomorrow. Is it possible to finish when we would like to
10 -- perhaps we could find out howlong --

11 CHAIRMAN BURG: Let me ask him.

12 MR. ZUCKERMAN: I will have another 10 or 15
13 minutes. I don't know how long Mr. Greenman. Not long.
14 I think we finish this. --

15 MR. GREENMAN: Around 5.

16 CHAIRMAN BURG: Around five minutes?

17 MR. GREENMAN: No, around 5:00 o'clock.

18 CHAIRMAN BURG: Okay.

19 MR. GREENMAN: I will try to keep mine under 10
20 minutes.

21 CHAIRMAN BURG: Any reply, submissions to the
22 AGAC motion should be received by the Tribunal by Monday
23 With that, we will adjourn till 10:00 tomorrow morning.

24 (Whereupon, the hearing was adjourned until 10:00
25 o'clock a.m. the following day, July 16, 1980
in the Commodity Futures Hearing Room.)